

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT CLEVELAND

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IN RE: : Case No. 1:17-md-2804  
:  
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: *October 20, 2021*  
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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Lance A. Boardman, RDR, CRR  
United States District Court  
801 West Superior Avenue  
Court Reporters 7-189  
Cleveland, Ohio 44113  
216.357.7019

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24 ALSO PRESENT: David Cohen, Special Master

25 - - - - -



08:51:19 1 (In open court at 8:51 a.m.)

08:51:21 2 THE COURT: You may be seated.

08:51:22 3 Can you give me the list from yesterday with the  
08:51:25 4 exhibits?

08:51:26 5 All right. I realized I didn't put on the record the  
08:51:32 6 exhibits that are in without objection. So I put Nelson  
08:51:40 7 08077, 07174, 41748, 20631, 08163, 08164, 08093, 07381,  
08:52:01 8 20824, 08048, 07036, 07799, 20852080 -- I'm sorry, 20850 and  
08:52:21 9 08037.

08:52:31 10 Then we'll deal with Tsipakis later.

08:52:49 11 All right. I reviewed the plaintiffs' response in  
08:52:52 12 option to the defendants' motion to preclude testimony from  
08:52:59 13 plaintiffs' fact witnesses April Caraway and Kim Fraser  
08:53:05 14 about prescription opioids being a gateway to other drug  
08:53:08 15 use.

08:53:11 16 I'm going to wait and see what the basis these  
08:53:17 17 witnesses give for their testimony, what experience. And if  
08:53:21 18 I'm satisfied that their experience qualifies them to give a  
08:53:26 19 lay opinion, I will do so. I'll listen carefully to the  
08:53:29 20 question. If there are objections, I'll deal with it, but  
08:53:33 21 I'll deal with it on a question-by-question basis.

08:53:38 22 I think a lay witness, depending on their experience,  
08:53:42 23 can give opinions commensurate with that experience, but  
08:53:47 24 I'll see what it is and I'll see what the opinion's going to  
08:53:50 25 be.

08:53:51 1 MR. DELINSKY: Your Honor, just two issues.  
08:53:55 2 And I understand Your Honor's ruling.

08:53:58 3 MR. WEINBERGER: Your Honor, one of the  
08:53:59 4 witnesses is our representative. Do you want her to step  
08:54:02 5 out during this colloquy?

08:54:08 6 MR. DELINSKY: It's okay with me.

08:54:10 7 THE COURT: I don't think it matters.

08:54:12 8 MR. DELINSKY: I agree.

08:54:13 9 Depending on how the question is phrased, it could  
08:54:16 10 obscure the basis. And that's part -- in other words, if --  
08:54:20 11 you know, do you have information that there's a gateway  
08:54:24 12 effect could elicit --

08:54:25 13 THE COURT: Well, I'm not going to allow a  
08:54:27 14 leading question like that, Mr. Delinsky. I mean, first  
08:54:32 15 there will be questions about the witness's position, her  
08:54:36 16 experience, what she does, et cetera, and I'll determine --  
08:54:40 17 you know, I'll listen to that. And then there will be a  
08:54:44 18 nonleading question about an opinion. And if there's an  
08:54:47 19 objection, I'll address it then.

08:54:50 20 MR. DELINSKY: Okay, Your Honor --

08:54:51 21 THE COURT: And that's how I expect it to come  
08:54:52 22 in.

08:54:53 23 MR. DELINSKY: Okay. Your Honor, one -- then  
08:54:55 24 moving to the opinion part of it, there's two issues I'd  
08:54:58 25 like to raise on the lay opinion issue to frame the issues

08:55:02 1 as we move into those examinations.

08:55:04 2 Number one is lay opinions have -- unlike expert  
08:55:08 3 opinions, lay opinions have to be based on personal  
08:55:11 4 knowledge as well. They can't --

08:55:13 5 THE COURT: Well, everyone says this, but that  
08:55:15 6 isn't -- that really isn't accurate, Mr. Delinsky.  
08:55:19 7 Everyone's opinion, if it's your professional experience, a  
08:55:24 8 lot of your professional experience is working with people,  
08:55:27 9 talking to them, listening to them.

08:55:30 10 Quite frankly, scientific expert opinion is often  
08:55:33 11 based on hearsay. You do a scientific study, you're  
08:55:38 12 assuming that the subjects to the study are doing what  
08:55:42 13 you've instructed them to do, and they tell you, yes, I  
08:55:45 14 followed the instructions, I did this or that, but that's  
08:55:47 15 hearsay. You're not monitoring them 24/7.

08:55:49 16 MR. DELINSKY: You're right, Your Honor --

08:55:51 17 THE COURT: There's a whole lot of embedded  
08:55:53 18 hearsay.

08:55:53 19 Now, you know, you can't just relate so and so told me  
08:55:57 20 this, so and so told me this.

08:55:59 21 MR. DELINSKY: No, Your Honor, you're exactly  
08:56:02 22 right, but that's indicative of the difference between the  
08:56:04 23 operation of Rule 701, which is lay opinion, and 702, which  
08:56:09 24 is expert opinion. You are absolutely 100 percent right  
08:56:12 25 that an expert opinion, an expert witness, can rely on

08:56:16 1 testimony that is hearsay or is otherwise not admissible.  
08:56:20 2 But that is not the case in the case of a lay -- of a lay  
08:56:24 3 witness. It has to be rationally based on the witness's  
08:56:27 4 perception. That's the language of the rule.

08:56:30 5 And the cases are crystal clear that it can't be  
08:56:34 6 hearsay based, that 701 isn't an avenue to launder what is  
08:56:39 7 hearsay into opinion. And the cases are clear on that, Your  
08:56:43 8 Honor. So I want to --

08:56:46 9 The other issue I want to raise is that lay opinions  
08:56:49 10 under the plain terms of the rule cannot be based on  
08:56:51 11 scientific, technical, or other specialized knowledge. They  
08:56:55 12 can't be.

08:56:57 13 THE COURT: I agree with that.

08:56:59 14 MR. DELINSKY: So we are already having  
08:57:02 15 opinions from experts on gateway, whether it's Caleb  
08:57:06 16 Alexander, Anna Keys, Anna Lembke.

08:57:11 17 That by definition entails a determination by the  
08:57:14 18 Court that the subject of that testimony is scientific,  
08:57:21 19 technical, or other specialized opinions. It can't be both.  
08:57:26 20 If it's appropriate for a lay opinion, it by definition  
08:57:29 21 cannot be appropriate for an expert opinion and vice versa.  
08:57:32 22 It's one or the other.

08:57:33 23 So we have two problems here, one the hearsay and,  
08:57:36 24 number two --

08:57:36 25 THE COURT: Well, I will see what experience



08:57:39 1 the witness has and what specific questions they're asked.  
08:57:42 2 And I agree, I'm not going to let either of these witnesses  
08:57:46 3 give expert testimony or phrased in a way that an expert  
08:57:49 4 would answer the question, you're right, I'm not going to  
08:57:52 5 permit that.

08:57:55 6 So I'll see what the experience is and exactly what  
08:57:58 7 the question that's asked.

08:58:00 8 MR. MAJORAS: Your Honor, John Majoras.

08:58:02 9 Just related to that, I guess I'll just apologize in  
08:58:05 10 advance if this were to occur, but if, as Mr. Delinsky  
08:58:07 11 pointed out, the witness were to -- regardless of the  
08:58:11 12 question, were to venture into this area, we will object  
08:58:14 13 immediately, and I apologize if that will interrupt, but I  
08:58:16 14 think it's appropriate. We think it's -- any mention of it  
08:58:19 15 is highly prejudicial.

08:58:21 16 THE COURT: If you think the witness is  
08:58:41 17 venturing into an area that's objectionable, obviously you  
08:58:26 18 should object. If I see it, I'll try and stop it, but, you  
08:58:29 19 know, that's what diligent counsel is supposed to do, be on  
08:58:32 20 top of it.

08:58:33 21 MR. MAJORAS: Thank you.

08:58:33 22 THE COURT: I don't have a problem with that.

08:58:45 23 I guess earlier in the morning there was a motion to  
08:58:48 24 preclude testimony from David Cutler or certain opinions  
08:58:53 25 from David Cutler. I'm sure I'll get a response. When does

08:58:58 1 Mr. Cutler --

08:59:02 2 MR. LANIER: He'll be the next witness after  
08:59:05 3 Ms. Polster, Your Honor. Oh, no, no, no. No, David Cutler  
08:59:09 4 will be the next witness after Tasha Polster.

08:59:13 5 Frankly, Judge, I think most of the questions that  
08:59:15 6 they're objecting to aren't ones I plan on asking anyway.

08:59:18 7 THE COURT: All right. Well, then that's one  
08:59:19 8 way to deal with it. So, okay.

08:59:19 9 MR. LANIER: So I'll look at it to give a  
08:59:22 10 response but --

08:59:23 11 THE COURT: Well, that's one way to deal with  
08:59:28 12 it.

08:59:28 13 MR. LANIER: I'm not going to have him on the  
08:59:29 14 stand long, and I've got questions that I think are  
08:59:32 15 unobjectionable, and I don't think it will be a problem.

08:59:35 16 THE COURT: All right. Well, then we'll put  
08:59:40 17 that aside.

08:59:40 18 And then I still need a response from the plaintiffs  
08:59:42 19 on the motion to preclude testimony from Nicole McCallion.  
08:59:47 20 I guess she's slated to be on --

08:59:51 21 MR. LANIER: She would like to take the stand  
08:59:53 22 Friday, Your Honor. And I know that our briefing people are  
08:59:55 23 working on it as we speak.

08:59:57 24 THE COURT: All right. That's fine. I just  
08:59:59 25 didn't want to forget about that.

09:00:09 1 All right. My staff was alerting me there was some  
09:00:12 2 issue about a witness who is going to be testifying by  
09:00:18 3 video. Is that Mr. Chunderlik?

09:00:20 4 MS. SULLIVAN: Yes, Your Honor.

09:00:23 5 THE COURT: All right. With the fact that he  
09:00:24 6 didn't want anyone present with him handing the exhibits, so  
09:00:29 7 the exhibits will be shown to him remotely. And when that  
09:00:32 8 happens, because of the technology, the exhibit will be very  
09:00:36 9 large and he will be very small. If that's the way it is,  
09:00:44 10 that's the way it is. I don't have a real problem with it  
09:00:50 11 unless someone has a way to resolve that, we'll just do  
09:00:53 12 that, and I'll just tell the jury that that's the way the  
09:00:57 13 technology works.

09:00:58 14 MS. SULLIVAN: Thank you, Your Honor. We're  
09:00:59 15 working on a way to resolve it, but if not, thank you, Your  
09:01:01 16 Honor.

09:01:01 17 THE COURT: All right. I mean, it's not --  
09:01:05 18 it's not the end of the world. We've all done a whole a lot  
09:01:09 19 of things on Zoom and remotely the last year and a half, I'm  
09:01:12 20 sure the jurors have, and they can, you know, see two  
09:01:16 21 screens at once, okay? And again, they'll hear -- they'll  
09:01:19 22 hear the testimony, and it's not critical that they, you  
09:01:24 23 know, see the face large the whole time.

09:01:27 24 MR. LANIER: Your Honor, Mark Lanier for  
09:01:29 25 plaintiffs.

09:01:30 1 Let the Court know that we are working very  
09:01:32 2 cooperatively with Ms. Sullivan, and the parties will work  
09:01:37 3 together on that through Special Master Cohen. But we have  
09:01:43 4 an aligned interest, both sides want the same net effect,  
09:01:46 5 and so there's no real discord. We've just got to figure  
09:01:49 6 out the best way to do it, and we commit to doing that with  
09:01:51 7 the Court.

09:01:51 8 THE COURT: If you can do it, fine, but if you  
09:01:53 9 can't, I don't want people, you know, up all night. I mean,  
09:01:56 10 it's not so terrible that, you know, we have a split screen  
09:02:00 11 and if the face is small during the time when there's a  
09:02:03 12 document up there.

09:02:05 13 I mean, and knowing that, then I would, you know,  
09:02:10 14 obviously caution counsel to only have the document up so  
09:02:14 15 long as it's essential and then take it down so that the  
09:02:19 16 rest of the time the witness's face is front and center.

09:02:24 17 It's not -- this jury can handle that, trust me.  
09:02:30 18 They've handled everything else, they can handle that.

09:02:33 19 MS. SULLIVAN: Thank you, Your Honor.

09:02:37 20 THE COURT: Okay. I guess if all the jurors  
09:02:39 21 are here, we can start.

09:02:40 22 MR. LANIER: The last thing, Your Honor, if I  
09:02:42 23 could, we got a notice of a number of exhibits that are  
09:02:46 24 going to be used supposedly in the direct examination of  
09:02:52 25 this witness, Ms. Polster. And among those exhibits, for

09:02:56 1 example, are four PowerPoint presentations of Joe Rannazzisi  
09:03:05 2 which the parties objected to us even using one when  
09:03:12 3 Joe Rannazzisi on the stand and the witness has said she  
09:03:14 4 only went to one of his presentations and didn't really  
09:03:17 5 remember it on direct. And I don't understand a number of  
09:03:21 6 their documents but including how they plan on using  
09:03:24 7 exhibits that they would not let me use with Joe Rannazzisi  
09:03:28 8 because they were hearsay, and yet they plan on using it  
09:03:31 9 with a witness who has no basis of proving it up.

09:03:34 10 There are a number of other documents that she's not  
09:03:36 11 on, she's a fact witness, and we don't understand how  
09:03:39 12 they're going to be using those on direct when the  
09:03:44 13 limitations exist that exist in this court.

09:03:48 14 And we just want to say that because we don't want to  
09:03:50 15 interrupt everything.

09:03:51 16 THE COURT: Well, I try and keep the same  
09:03:53 17 strike zone for both sides. And you can show a witness, in  
09:04:00 18 my view, almost anything and ask them if they know anything  
09:04:02 19 about it. And if they do, you can ask relevant questions.  
09:04:06 20 If they don't, generally that ends it.

09:04:11 21 MR. LANIER: Well, our concern there is, for  
09:04:13 22 example, I asked that question of Joe Rannazzisi about the  
09:04:15 23 PowerPoints he prepared, and the answer was, well, yeah, I  
09:04:19 24 prepared these. And yet I wasn't allowed to use them, I  
09:04:22 25 wasn't allowed to show them except for certain pages of only

09:04:25 1 one.

09:04:28 2 MS. SWIFT: Your Honor, the witness testified  
09:04:29 3 yesterday that she had attended one of Mr. Rannazzisi's  
09:04:32 4 presentations.

09:04:33 5 THE COURT: If she attended a presentation,  
09:04:34 6 she can certainly be examined about it. And Mr. Rannazzisi,  
09:04:40 7 where -- if there was any evidence that he presented  
09:04:45 8 anything where at least one representative of one of the  
09:04:49 9 defendants was present, I allowed the testimony.

09:04:55 10 MR. LANIER: You allowed the testimony about  
09:04:58 11 the presentation, and you allowed certain pages of the  
09:05:02 12 exhibit to be used of one presentation.

09:05:04 13 Our concern is they have four --

09:05:08 14 THE COURT: Well, let's what we're going to  
09:05:10 15 do. And again, I'm going to apply the same ground rules to  
09:05:13 16 them that I applied to the plaintiffs.

09:05:15 17 MS. SWIFT: Thank you, Your Honor.

09:05:16 18 THE COURT: And it's going to depend on, you  
09:05:20 19 know, if the witness has knowledge of it. If she does, she  
09:05:23 20 can testify about it. If she doesn't, that tends, we'll  
09:05:27 21 move on to another document. Okay.

09:07:58 22 (Jury present in open court at 9:07 a.m.)

09:08:04 23 THE COURT: Good morning, ladies and  
09:08:05 24 gentlemen. Please be seated.

09:08:07 25 And Mr. Lanier, you may continue with your

**Polster (Cross by Lanier)**

3000

09:08:10 1 examination.

09:08:11 2 And Ms. Polster, I just want to remind you you're  
09:08:13 3 under oath from yesterday.

09:08:16 4 NATASHA POLSTER

09:08:16 5 - - - - -

09:08:17 6 CROSS-EXAMINATION (CONT'D)

09:08:17 7 BY MR. LANIER:

09:08:18 8 **Q** Good morning, Ms. Polster.

09:08:19 9 **A** Good morning.

09:08:19 10 **Q** Good morning, ladies and gentlemen.

09:08:20 11 Your Honor, may it please this Honorable Court.

09:08:26 12 Ms. Polster, we left off yesterday, and we were  
09:08:32 13 talking about the era where you had sent an e-mail of  
09:08:42 14 instructions out on how to handle certain things. And then  
09:08:47 15 I jumped forward to a 2018 situation with Mr. Yaeger. I'd  
09:08:52 16 like to now go back to the timeline where we were in that  
09:08:56 17 2014 to 2015 era. Okay?

09:09:00 18 **A** Okay.

09:09:03 19 **Q** And one of the questions I had asked you about was  
09:09:05 20 going yesterday as far back as 2013 with the target drug  
09:09:11 21 good faith dispensing. And I asked you if you remembered  
09:09:15 22 whether or not you told people whether it was appropriate to  
09:09:23 23 delete information in the comments section of their computer  
09:09:27 24 programs that talked about whether or not prescriptions  
09:09:31 25 needed data on the customer.

09:09:34 1 Remember that?

09:09:35 2 **A** Yes.

09:09:35 3 **Q** And in that regard, I had a chance to pull another  
09:09:43 4 exhibit which we'll mark as Plaintiffs' 25621. And we're  
09:09:50 5 moving forward into 2014 on that issue now. But I'll ask  
09:09:59 6 Ms. Fleming and Ms. Lanier to pass those and I'll a question  
09:10:04 7 about them.

09:10:04 8 Do you have plaintiffs' 25621 in front of you?

09:10:08 9 **A** Yes.

09:10:09 10 **Q** And can you confirm this is an e-mail, the top one is  
09:10:11 11 to you, but the one right below it is from you. Correct?

09:10:15 12 **A** Yes.

09:10:15 13 **Q** And then the very bottom e-mail is to you.

09:10:20 14 And the one that is to you is dated May 21, 2014,  
09:10:28 15 correct?

09:10:29 16 **A** Yes.

09:10:33 17 **Q** And it's about comments on good faith dispensing.  
09:10:38 18 Do you see that as well?

09:10:39 19 **A** Yes.

09:10:39 20 **Q** It says, "I wanted to reach out to you about your  
09:10:45 21 thoughts" -- let me see if I can help this -- "about your  
09:10:51 22 thoughts on the good faith dispensing comments. The  
09:10:57 23 comments section is getting full for many patients and  
09:11:00 24 requiring the deletion of comments (not just good faith  
09:11:06 25 dispensing but other comments as well). Especially in the



09:11:11 1 Florida area."

09:11:14 2 Do you see this?

09:11:15 3 **A** Yes.

09:11:18 4 **Q** "Is it okay to give direction around purging of old  
09:11:23 5 good faith dispensing comments? I wanted to run this past  
09:11:25 6 you before anything was done."

09:11:28 7 You see that as well?

09:11:29 8 **A** Yes, I do.

09:11:30 9 **Q** So to frame this problem, you understand the  
09:11:38 10 importance of good faith dispensing comments, right?

09:11:40 11 **A** Yes.

09:11:40 12 **Q** You understand that that is where if a pharmacist is  
09:11:45 13 going to do their due diligence, where they may input some  
09:11:49 14 notes, correct?

09:11:50 15 **A** It's one of the areas, yes.

09:11:51 16 **Q** Right. So they may put in notes about called the  
09:11:56 17 physician or something like that?

09:11:58 18 **A** No.

09:11:58 19 **Q** Those notes would not go in there?

09:12:01 20 **A** Not necessarily.

09:12:01 21 **Q** Not necessarily or no, they would not ever go in  
09:12:04 22 there?

09:12:04 23 **A** It was up to the pharmacist, but the direction for  
09:12:08 24 that particular comment field was intended for if a  
09:12:12 25 prescription was refused, so that if that patient did go to

09:12:18 1 another Walgreens store with that prescription, if the first  
09:12:22 2 Walgreens store felt it did not meet good faith, the  
09:12:25 3 pharmacy down the street would see that information for that  
09:12:29 4 specific prescription.

09:12:29 5 **Q** So your testimony is the only thing that should be in  
09:12:34 6 that box is reasons to refuse a prescription?

09:12:36 7 **A** That is not what I said.

09:12:38 8 **Q** Okay.

09:12:38 9 **A** However, that --

09:12:39 10 **Q** Well, help me understand.

09:12:41 11 Will that box -- here, let's -- this is the good faith  
09:12:48 12 dispensing comments box, right?

09:12:50 13 **A** No, it's not called that.

09:12:53 14 **Q** That's -- it's called here, "I wanted to reach out to  
09:12:59 15 you about your thoughts on the good faith dispensing  
09:13:01 16 comments, the comments section."

09:13:04 17 So can we call it the good faith dispensing comments  
09:13:07 18 section?

09:13:08 19 **A** No, because that's not what she's referring to.

09:13:11 20 **Q** Okay. What is she referring to?

09:13:13 21 **A** There are multiple --

09:13:15 22 MS. SWIFT: Objection to the writing on the  
09:13:17 23 demonstrative that didn't match the witness's testimony.

09:13:21 24 THE COURT: I don't have it anyway so --

09:13:23 25 You may answer.

09:13:24 1 **A** The comments that she's referring to are specific to  
09:13:27 2 the GFD refusal prescriptions or other comments that a  
09:13:32 3 pharmacist might use. But that is only one area in our  
09:13:36 4 computer system where comments can be entered.

09:13:39 5 **Q** Okay. So your testimony on the comments section is  
09:13:45 6 that she's talking about the refusal section?

09:13:48 7 **A** A section where we do give direction for refusal.

09:13:52 8 **Q** Section where give direction --

09:13:57 9 **A** To enter refusals.

09:14:01 10 **Q** For refusal.

09:14:03 11 Well, that's critical, isn't it?

09:14:06 12 **A** For that specific prescription.

09:14:08 13 **Q** Yeah. You understand some of these prescriptions have  
09:14:13 14 renewals, so you can have a prescription that's a year old  
09:14:18 15 and it will still be up for renewal, right?

09:14:20 16 **A** A lot of things will change in a year, and each  
09:14:23 17 prescription needs to be taken on its own merit.

09:14:25 18 **Q** That wasn't my question, ma'am.

09:14:27 19 Can you answer my question?

09:14:28 20 **A** Say your question again, please.

09:14:30 21 **Q** Yes, ma'am.

09:14:31 22 I said this: Some of these prescriptions have  
09:14:35 23 renewals, so you can have a prescription that's a year old  
09:14:40 24 and it can still come up for renewal, right?

09:14:43 25 **A** I don't know what your definition of renewal is, but a

09:14:45 1 prescription for a controlled substance cannot be renewed.

09:14:49 2 **Q** Refilled.

09:14:49 3 **A** A new prescription has to be written physically by the  
09:14:52 4 prescriber for a Schedule II. It cannot be refilled.

09:14:55 5 **Q** So you cannot have a refill back in 2014?

09:14:58 6 **A** Not on a Schedule II. It would have to be a paper  
09:15:02 7 written prescription or an electronic prescription that is  
09:15:06 8 sent by the physician.

09:15:07 9 **Q** So you've got a refusal section that's getting full,  
09:15:15 10 and you give instructions to delete that information?

09:15:18 11 **A** The oldest information should be deleted, and the most  
09:15:22 12 recent information should be added.

09:15:24 13 **Q** In other words, you'll have information about refusing  
09:15:29 14 prescriptions, and you will instruct people delete that  
09:15:33 15 information?

09:15:33 16 **A** That information is located in multiple places within  
09:15:37 17 the store and in the computer. And, yes, the most recent  
09:15:40 18 information needs to be entered into the comment field,  
09:15:45 19 which means that, yes, older information that is not  
09:15:49 20 relevant anymore to the prescription you're looking at will  
09:15:52 21 be deleted in some cases.

09:15:54 22 **Q** Well, wait a minute, wait a minute.

09:15:57 23 Older information that's not relevant to the  
09:16:02 24 prescription you're looking at will be purged, deleted?

09:16:06 25 **A** In some cases.

09:16:09 1 Q And you say it's not relevant because it's a different  
09:16:13 2 prescription?

09:16:14 3 A That is correct.

09:16:15 4 Q So if someone brings in a hydro prescription and it's  
09:16:24 5 refused because it looks fake, that's not going to be  
09:16:27 6 relevant when the person brings in an oxy prescription?

09:16:30 7 A There's a difference.

09:16:30 8 Q Is that what you're saying?

09:16:32 9 A I'm saying that you have to enter the most recent  
09:16:37 10 information.

09:16:38 11 Q Ma'am, can you answer my question, please?

09:16:42 12 A Can you ask your question again?

09:16:44 13 Q Yes, ma'am.

09:16:45 14 So if someone brings in a hydro prescription and the  
09:16:50 15 pharmacist determines that it's fake and enters that into  
09:16:54 16 your comments field but that comments field gets full and so  
09:17:00 17 it's purged, then later when that same prescription brings  
09:17:05 18 in an oxy prescription, the comments are gone, aren't they?

09:17:10 19 A For that situation in that field, yes. But recall  
09:17:15 20 that I mentioned there are multiple places that they can  
09:17:18 21 enter comment.

09:17:19 22 Q Ma'am, I'm sure they can enter comments in multiple  
09:17:24 23 fields, but if that's the field they choose, and that's the  
09:17:28 24 field where you direct them to put it, it's gone later by  
09:17:33 25 your purging policy, correct?

09:17:35 1 **A** It's not a policy, but, yes, they have to purge it if  
09:17:39 2 the field gets too full.

09:17:41 3 **Q** Well, your reply to this was "Thoughts on this?"

09:17:49 4 **A** Correct.

09:17:49 5 **Q** And then you get told the following: "I think that's  
09:17:54 6 probably a good idea. Target drug good faith dispensing  
09:17:59 7 comments are only supposed to be for one script each time,  
09:18:04 8 so technically, other than ID info that may be in the  
09:18:08 9 comments, other info could be purged."

09:18:12 10 Do you see that?

09:18:13 11 **A** I do.

09:18:13 12 **Q** So the comment field that you say was the section  
09:18:23 13 where direction for refusal was supposed to be could be  
09:18:27 14 purged of information, true?

09:18:28 15 **A** The older information, yes.

09:18:29 16 **Q** And that older information could be a reason for --  
09:18:33 17 well, should be by you a reason for refusal, right?

09:18:37 18 **A** You're putting my words in my mouth.

09:18:39 19 **Q** No, ma'am.

09:18:40 20 **A** But for that specific prescription, the notes need to  
09:18:43 21 be there.

09:18:44 22 **Q** Ma'am, I'm not trying to put any words in your mouth.

09:18:47 23 You specifically, and I can show you the testimony,  
09:18:49 24 you specifically said, you used these words, that "this is a  
09:18:55 25 field for reasons for refusal."

09:18:58 1 Are you changing on that now? Would you like to see  
09:19:01 2 it?

09:19:01 3 **A** No, that is one of the areas for reasons for refusal,  
09:19:04 4 yes.

09:19:06 5 **Q** Yeah, so I'm not putting words in your mouth. I'm  
09:19:08 6 trying to understand your testimony under oath. Right?

09:19:13 7 Your testimony under oath is the comments section is  
09:19:17 8 the section where direction for refusals are put, right?

09:19:21 9 **A** Refusals for the prescription that you have in front  
09:19:24 10 of you.

09:19:25 11 **Q** And so you have recognized that your company's going  
09:19:29 12 to have a policy or an approach that purges that  
09:19:37 13 information, true?

09:19:37 14 **A** It does not purge it on its own, but, correct, the  
09:19:41 15 oldest information, if the newest information doesn't fit,  
09:19:44 16 they have no other option than to delete older information.

09:19:49 17 **Q** So you're saying now they have no other option, and  
09:19:54 18 the reason they have no other option is because that's the  
09:19:56 19 system y'all had in place at the time, right?

09:19:59 20 **A** That's correct.

09:19:59 21 **Q** And so you had a system in place that did not leave an  
09:20:03 22 option for leaving the reasons for refusal. Instead, they  
09:20:09 23 would be purged as the age continued, as the time continued,  
09:20:14 24 right?

09:20:15 25 MS. SWIFT: Objection. Mischaracterizes the

09:20:17 1 testimony.

09:20:18 2 THE COURT: Overruled.

09:20:21 3 **A** So when a prescription is refused, the prescription is  
09:20:26 4 refused for that specific prescription. Our policy is we  
09:20:30 5 take each prescription on their own merit. What's happening  
09:20:34 6 with the patient, what's happening with the prescriber who  
09:20:36 7 wrote it, and what's happening at that time with the  
09:20:40 8 pharmacist.

09:20:42 9 The reason why we do that is to ensure that if a  
09:20:46 10 patient's prescription is refused at Walgreens, only that  
09:20:50 11 prescription is refused. And it's refused at all Walgreens.

09:20:53 12 And so the pharmacist's instruction is to put a note  
09:20:57 13 in the computer system in addition to keeping a hard copy in  
09:21:02 14 the refusal folder that we discussed yesterday, to put it  
09:21:05 15 into the system so that the next pharmacist down the road,  
09:21:10 16 should the patient show up with that prescription, know that  
09:21:13 17 the pharmacist at store A refused to fill the prescription  
09:21:16 18 and that prescription was refused at all stores.

09:21:19 19 **Q** Right. That's critical information, isn't it?

09:21:22 20 **A** For that specific prescription, yes.

09:21:24 21 **Q** Well, ma'am, let's say you've got a person, and this  
09:21:28 22 person is holding a fake --

09:21:32 23 **A** There's a difference between a --

09:21:34 24 **Q** Prescription?

09:21:35 25 **A** -- fake prescription.



09:21:37 1 Q Time out, ma'am. I've got to ask questions, and then  
09:21:39 2 you give answers, okay?

09:21:41 3 A Okay.

09:21:41 4 Q I want you to suppose that person's holding a fake  
09:21:44 5 prescription and takes it into a Walgreens store.

09:21:49 6 You with me so far?

09:21:50 7 A Yes.

09:21:50 8 Q And the Walgreens store says -- the pharmacist is on  
09:22:00 9 top of their game, they say that prescription looks fake to  
09:22:05 10 me. I'm not going to fill it.

09:22:07 11 You with me so far?

09:22:08 12 A Yes.

09:22:13 13 Q Then that Walgreens pharmacist puts a note in this  
09:22:18 14 comments section where you direct them to put the note, and  
09:22:22 15 the note says, "Note: Person X, Rx refused, fake  
09:22:35 16 prescription."

09:22:36 17 Puts it in the notes field, right?

09:22:39 18 A There may be a note in the field, but it won't say  
09:22:43 19 "fake."

09:22:43 20 Q All right. It will say something more polite, like  
09:22:47 21 "suspicious"?

09:22:48 22 A No it will not. It will say it did not pass the  
09:22:51 23 Walgreens good faith dispensing policy.

09:22:54 24 Q So y'all don't have them --

09:22:56 25 MS. SWIFT: Objection. She wasn't done with

09:22:58 1 her answer.

09:22:59 2 MR. LANIER: I'm sorry, Judge.

09:23:00 3 THE COURT: Yes, let her finish, please.

09:23:01 4 **A** There's a difference between a fake prescription and a  
09:23:04 5 prescription that does not meet our good faith dispensing  
09:23:07 6 policy. Two completely different situations.

09:23:11 7 **Q** Well, I'm asking you if it's a fake prescription, will  
09:23:16 8 a note be put in there to that effect? Should a note be put  
09:23:22 9 in there to that effect?

09:23:23 10 **A** It's possible, but there are multiple places where  
09:23:25 11 they would enter that.

09:23:26 12 **Q** But we're talking specifically about the section where  
09:23:28 13 y'all direct them to put their reasons for refusal,  
09:23:32 14 remember? That was your testimony.

09:23:33 15 **A** Oh, I remember my testimony, but I also recall that  
09:23:36 16 there's a difference between a good faith dispensing  
09:23:41 17 rejection prescription because it does not meet good faith  
09:23:45 18 and a fake prescription where the doctor didn't write it,  
09:23:47 19 the patient forged it.

09:23:48 20 **Q** All right. Then instead we'll say it's refused for  
09:23:53 21 doctor shopping. How's that?

09:23:57 22 **A** I would say refused on good faith dispensing, not  
09:24:00 23 doctor shopping. That's different as well.

09:24:04 24 **Q** So the policy is, just say we refuse it, don't give  
09:24:07 25 details why?

09:24:07 1 **A** We have all that information in the refusal folder at  
09:24:10 2 the home store, which is noted in the comments.

09:24:13 3 **Q** But back then, it wasn't on a computer where any  
09:24:17 4 pharmacist could see it. It's on a paper copy, right?

09:24:21 5 **A** Correct. However, the store -- the store at store B  
09:24:25 6 knows what store refused it at store A and calls -- can call  
09:24:31 7 that pharmacist and have a conversation because the notes  
09:24:35 8 are retained in the refusal folder.

09:24:37 9 **Q** Okay. So, ma'am, these are the notes of refusal that,  
09:24:44 10 first of all, your policy is that these notes don't need to  
09:24:48 11 contain the reason for refusal beyond just didn't pass our  
09:24:53 12 standards, right?

09:24:53 13 **A** That is correct, for that specific prescription.

09:24:56 14 **Q** Don't you think it would be more useful to put into a  
09:25:04 15 comments section the specific reasons, like called the  
09:25:06 16 doctor, doctor said it was not genuine, or called the  
09:25:13 17 doctor, doctor said didn't know the patient was shopping, or  
09:25:17 18 we saw evidence -- checked OARRS, saw doctor shopping, saw  
09:25:23 19 pharmacy shopping. Don't you think putting substance like  
09:25:26 20 that might be helpful?

09:25:27 21 **A** We have many places in our computer system to put that  
09:25:30 22 information.

09:25:30 23 **Q** Is that a "yes," that you do think it would be helpful  
09:25:33 24 to put into the comments section where you put the reasons  
09:25:35 25 for refusal?

09:25:36 1 **A** Multiple places in IntercomPlus to put comments. It  
09:25:41 2 does not always have to be in that spot.

09:25:43 3 **Q** Ma'am, can you answer my question?

09:25:47 4 **A** Our policy is to enter information into our computer  
09:25:50 5 system. If a prescription fails good faith, it goes into  
09:25:54 6 that comments section for that specific prescription. We  
09:25:59 7 have patient comments, we have prescription comments, and we  
09:26:02 8 have prescriber comments.

09:26:03 9 The pharmacists are able to use any of those fields.

09:26:07 10 **Q** That wasn't my question. My question was, don't you  
09:26:10 11 think it would be a good policy in this section where they  
09:26:15 12 give their -- they're directed to give their reasons for  
09:26:20 13 refusal, don't you think it would be a good policy to have  
09:26:23 14 them explain why in some measure of detail?

09:26:27 15 **A** It is explained why. It did not pass the  
09:26:32 16 pharmacy's -- the pharmacist's good faith dispensing  
09:26:36 17 procedures when they went through it.

09:26:37 18 **Q** Ma'am, that it does not pass good faith dispensing is  
09:26:39 19 not in itself detail, is it?

09:26:41 20 **A** It is because our pharmacists are trained that there  
09:26:45 21 are multiple reasons why a prescription is failed for good  
09:26:48 22 faith. And they can always call that pharmacist who did not  
09:26:52 23 pass that prescription and get more detail.

09:26:54 24 **Q** What if that pharmacist isn't working?

09:26:57 25 **A** The notes are in the refusal folder at the store for

09:27:00 1 the other pharmacists to pull.

09:27:01 2 **Q** Wait. The refusal folder, are you talking about the  
09:27:04 3 hard copy notes that are back in the storage file cabinet  
09:27:08 4 somewhere that get moved off site after a year to Iron  
09:27:13 5 Mountain?

09:27:13 6 **A** No, the refusal folder does not get removed from the  
09:27:17 7 store. It's the old prescription, like hard copy  
09:27:21 8 prescriptions from two years or more.

09:27:24 9 **Q** So you're saying that the refusal folders are present  
09:27:27 10 at the stores at all times?

09:27:29 11 **A** That's my understanding.

09:27:30 12 **Q** And this is back when they were paper refusal folders  
09:27:34 13 because you couldn't put them on the computer, they wouldn't  
09:27:36 14 let you?

09:27:38 15 **A** It's not that they wouldn't let me. The computer  
09:27:40 16 system needed enhancements in order to do that. And, so,  
09:27:45 17 yes, we did it on paper and put it in a folder.

09:27:48 18 **Q** Well, actually, ma'am, we'll get into the documents in  
09:27:52 19 a little bit on that, but you begged for years to put them  
09:27:54 20 on the computer and they wouldn't, would they?

09:27:57 21 **A** I have them on the computer now.

09:27:59 22 **Q** Yes, as of 2019, right?

09:28:03 23 MS. SWIFT: Objection.

09:28:03 24 THE COURT: Overruled.

09:28:04 25 **Q** As of 2019, right?

09:28:06 1 **A** We were able to put them in the computer for  
09:28:08 2 electronic, yes.

09:28:08 3 **Q** Yeah, but you had been begging for years for that to  
09:28:12 4 happen, hadn't you?

09:28:13 5 **A** It was an enhancement that I had on my list, yes.

09:28:15 6 **Q** In other words, you'd been saying for years we need  
09:28:18 7 electronic access to this, and it finally happens in 2019,  
09:28:22 8 right?

09:28:22 9 **A** Yes. We entered it in 2019.

09:28:25 10 **Q** So let's go back to 2014.

09:28:27 11 This is a time where y'all are purging information on  
09:28:32 12 the box that gives direction for refusal, right?

09:28:36 13 **A** When you say "y'all," who is y'all?

09:28:41 14 **Q** Walgreens.

09:28:42 15 **A** No, it's not Walgreens.

09:28:43 16 **Q** Okay.

09:28:43 17 **A** It is the pharmacist at the location is removing the  
09:28:47 18 information -- the old information, and the new information,  
09:28:51 19 the relevant information for that specific prescription  
09:28:55 20 would be documented into that box.

09:28:57 21 **Q** Well, are you answering this question as a pharmacist  
09:29:00 22 or are you answering this question as Walgreens' senior  
09:29:09 23 director of pharmaceutical integrity and third-party  
09:29:13 24 operations?

09:29:14 25 **A** If you look at that e-mail, that is not me answering

09:29:16 1 that question.

09:29:18 2 **Q** Ma'am, the question is, someone wanted to reach out to  
09:29:25 3 you, and your reply was simply, what are your thoughts on  
09:29:29 4 this. Right?

09:29:30 5 **A** Correct.

09:29:31 6 **Q** So who are you -- who is Ed Bratton? Is he a local  
09:29:35 7 pharmacist?

09:29:35 8 **A** Those are my team. That's my -- those folks are the  
09:29:40 9 people on my team.

09:29:42 10 **Q** So who is Patricia Daugherty?

09:29:46 11 **A** She is a pharmacist on my team.

09:29:47 12 **Q** And your team is who? What's your team?

09:29:52 13 **A** The pharmaceutical integrity managers.

09:29:55 14 **Q** Uh-huh. Pharmaceutical integrity managers.

09:30:05 15 These are the people in charge of overseeing that  
09:30:09 16 policy nationwide, right?

09:30:10 17 **A** Ensuring that it is executed upon, yes.

09:30:13 18 **Q** Well, in charge of developing, changing, and improving  
09:30:18 19 the policies and procedures around controlled substance  
09:30:23 20 dispensing. That's what y'all did, isn't it?

09:30:27 21 **A** Yes.

09:30:28 22 **Q** And so when you say, wait, it wasn't company saying to  
09:30:31 23 do this, it was the pharmacists, ma'am, y'all are the  
09:30:36 24 company, aren't you?

09:30:42 25 **A** I represent the company, yes.

09:30:43 1 Q And so does Patricia Daugherty who says, I think  
09:30:48 2 that's a good idea, other info beyond the ID info, other  
09:30:54 3 info could be purged.

09:30:55 4 Do you see that?

09:30:56 5 A Yes.

09:30:56 6 Q So to blame this on the pharmacists and say it's the  
09:31:00 7 pharmacists that purge, this is your policy that you're in  
09:31:05 8 charge of developing, changing, and improving around  
09:31:10 9 controlled substances throughout all the Walgreens stores,  
09:31:14 10 right?

09:31:15 11 MS. SWIFT: Objection. Mischaracterizes the  
09:31:16 12 testimony.

09:31:17 13 MR. LANIER: Not at all.

09:31:18 14 THE COURT: Overruled.

09:31:20 15 Q Right?

09:31:20 16 A So I kind of got lost in your statement on what was  
09:31:27 17 the question.

09:31:28 18 Q I'll reask it.

09:31:30 19 Ma'am, you said that this is the pharmacists' purging,  
09:31:36 20 but the policy is not coming from the pharmacists. It's  
09:31:41 21 coming from the group within the company that develops,  
09:31:43 22 changes, and improves policies and procedures around  
09:31:48 23 controlled substance dispensing, right?

09:31:50 24 A That's correct.

09:31:51 25 Q Thank you.



09:31:55 1 And it's your testimony to the jury today that that's  
09:31:58 2 a good policy, it's a good thing to purge information about  
09:32:01 3 why prescriptions were refused, right?

09:32:05 4 **A** It's my testimony today that that was what we had to  
09:32:08 5 work with at the time. The directions to our stores have  
09:32:14 6 always been you must enter information around your good  
09:32:18 7 faith dispensing whether you're refusing it for that  
09:32:22 8 specific prescription.

09:32:24 9 Each prescription is taken on its own merit, and what  
09:32:27 10 might be refused today may -- or, excuse me, what may have  
09:32:32 11 been refused let's say a year ago may not be refused today.

09:32:38 12 **Q** Ma'am, can you please now answer my question?

09:32:45 13 **A** You'll have to reask it. I'm --

09:32:47 14 **Q** Yes, ma'am.

09:32:47 15 I said: And it's your testimony to the -- here.

09:32:55 16 It's your testimony to the jury today --

09:33:04 17 **A** I can see it.

09:33:05 18 **Q** Your testimony to the jury today that it's a good  
09:33:10 19 thing, good policy -- it's a good thing to purge information  
09:33:12 20 about why prescriptions was refused.

09:33:16 21 You think that's a good policy, right?

09:33:19 22 **A** We've improved and changed our policies across the  
09:33:24 23 years. Of course we would not want anything major to be  
09:33:27 24 purged from the system. We have multiple places in our  
09:33:30 25 computer system where information can be entered.

09:33:34 1 Q Right. And multiple places where it can be purged.

09:33:37 2 My question to you is simple: Is that a good policy  
09:33:42 3 to have, to purge information on reasons you've refused  
09:33:48 4 prescriptions? Is that a good policy or not?

09:33:51 5 A It was the best we could do with the computer system  
09:33:55 6 section that we had at the time. And our policy is the most  
09:33:59 7 recent information needs to be in there. I hear you, you  
09:34:04 8 said good.

09:34:05 9 Q I'm not fussing that it's the best you could do at the  
09:34:08 10 time because of your computer system. We can then argue  
09:34:11 11 whether or not the computer system should have been changed.

09:34:15 12 My question first is, do you think it's a good policy  
09:34:18 13 to purge this information?

09:34:20 14 A Depends on what the information is.

09:34:21 15 Q If the information were the reasons that prescriptions  
09:34:26 16 for controlled substances were refused, do you think it's  
09:34:31 17 good to purge that information?

09:34:32 18 A It would depend on how old that information is.

09:34:37 19 Q So it's good to purge it if it's how old?

09:34:40 20 A I can't give you that information. Each situation has  
09:34:42 21 got to be taken on its own merit.

09:34:44 22 Q So it's good to have a policy that purges old  
09:34:49 23 information as long as it's selectively purged, is that what  
09:34:54 24 I'm hearing?

09:34:54 25 A It was never written in our policy.

09:35:01 1 Q Well, ma'am, did you send an e-mail out -- no, did you  
09:35:08 2 make a budget request to enhance the computer system so that  
09:35:15 3 those comments could be kept instead of purged?

09:35:18 4 A Yes.

09:35:19 5 Q And did it get shut down or was it enhanced in the  
09:35:22 6 next coming weeks, months?

09:35:25 7 A The way our budget system works, it's very  
09:35:29 8 complicated. It did not get approved right away.

09:35:33 9 Q When did it finally get approved in this change?

09:35:35 10 A I was able -- I was able to get the electronic good  
09:35:41 11 faith dispensing information in our computer system in 2019.

09:35:43 12 Q Five years later?

09:35:45 13 A Yes.

09:35:48 14 Q Do you have any clue how many prescriptions for  
09:35:52 15 controlled substances went out in Lake and Trumbull County  
09:35:56 16 in those five years?

09:35:57 17 A I do not.

09:36:02 18 Q Meanwhile, if we continue in 2014, y'all are under an  
09:36:10 19 agreement with the Government concerning how you will run  
09:36:16 20 your business, true?

09:36:21 21 A If you're referring to the memorandum of agreement,  
09:36:23 22 yes.

09:36:24 23 Q Yeah, you signed that memorandum of agreement, right?

09:36:27 24 A I did?

09:36:27 25 Q And --

09:36:29 1 **A** No, no, that was a question.

09:36:32 2 I didn't sign a memorandum of agreement.

09:36:35 3 **Q** Oh, I'm sorry. I thought you signed part of that. I  
09:36:40 4 must be wrong. I'm crossing my wires.

09:36:42 5 There was a memorandum of agreement which you are  
09:36:46 6 aware of because it's the one that in a sense established  
09:36:50 7 your job, right?

09:36:51 8 **A** It was the -- it was what I was asked to make sure  
09:36:56 9 that we executed on.

09:37:00 10 **Q** Now, part of what y'all had to do related to that is  
09:37:10 11 monitor your stores and check on how things are going and  
09:37:15 12 make sure that you're doing a better job nationwide, right?

09:37:18 13 **A** Yes.

09:37:18 14 **Q** I'm going to hand out Plaintiffs' -- I'm going to ask  
09:37:23 15 to be handed out Plaintiffs' Exhibit 25492, please.

09:37:27 16 You did an internal audit in this regard, didn't you?  
09:37:39 17 Or by "you," Walgreens did an internal audit, right?

09:37:42 18 **A** Yes.

09:37:42 19 **Q** And I've handed you Plaintiffs' Exhibit 25492. This  
09:37:48 20 is an e-mail to you December 12, 2014, concerning such  
09:37:53 21 internal audit. Correct?

09:37:55 22 **A** Yes.

09:37:56 23 **Q** And in this e-mail to you we see that it's the  
09:38:08 24 controlled substance order monitoring process review.  
09:38:12 25 Correct?

09:38:12 1 **A** Yes.

09:38:13 2 **Q** And it gives the background that on June 11, 2013,  
09:38:19 3 Walgreens entered into a settlement agreement -- settlement  
09:38:24 4 and memorandum of agreement with the DOJ and the DEA. True?

09:38:30 5 **A** Yes.

09:38:31 6 **Q** And then it says, "We recommend the following  
09:38:37 7 enhancements be made."

09:38:39 8 Do you see that?

09:38:40 9 **A** I do.

09:38:40 10 **Q** So now you're a year and a half after the agreement.  
09:38:49 11 There's a set of enhancements that are being sought, right?

09:38:57 12 **A** They're being recommended.

09:38:59 13 **Q** Yeah. These are because there are still problems even  
09:39:06 14 rolling into -- throughout 2014, right?

09:39:10 15 **A** Well, that he found -- they found items that they  
09:39:15 16 recommended enhancement. By that time, we were not  
09:39:22 17 distributing -- or we were getting close to not distributing  
09:39:26 18 controlled substances from our warehouses anymore. And so  
09:39:29 19 the order monitoring system that I have -- I had then and I  
09:39:33 20 still have today was for my information because we're not  
09:39:42 21 legally required to have an order monitoring system when we  
09:39:45 22 do not distribute controlled substances ourselves.

09:39:49 23 **Q** All right. And to make sure we're clear, distribute  
09:39:51 24 is different than dispense?

09:39:53 25 **A** Yes.

09:39:53 1 Q Distribute's sending them to your stores; dispense is  
09:39:58 2 sending them out of your stores. Right?

09:40:00 3 A Yeah, dispense to patients, correct.

09:40:03 4 Q So this was a time where you had revamped the  
09:40:06 5 distribution, the suspicious order monitoring program,  
09:40:11 6 right?

09:40:12 7 A Yes. There was a new system in place.

09:40:14 8 Q And yet your new system still needed more enhancing,  
09:40:18 9 according to this, correct?

09:40:20 10 A Yeah, they had recommendations.

09:40:22 11 Q And instead of doing those, y'all just quit dispensing  
09:40:28 12 the next year, didn't you?

09:40:29 13 A No, that was of the plan all along, was to stop  
09:40:34 14 distributing -- did you say distributing or dispensing?

09:40:36 15 Q Distributing is what I meant to say.

09:40:38 16 A Yeah, that was the plan all along. When I accepted  
09:40:42 17 the role in the pharmaceutical integrity team, the plan was  
09:40:46 18 already in place to move all controlled substance  
09:40:51 19 distribution to wholesalers versus our Walgreens  
09:40:54 20 distribution centers.

09:41:00 21 Q Well, these are all enhancements that y'all never did  
09:41:03 22 because you just quit distributing?

09:41:08 23 A No, I can't say that we didn't do all of them. I  
09:41:10 24 would have to take it line by line to be honest with you.  
09:41:13 25 But I cannot say that we did not do all of them. Some of

09:41:17 1 them of course were like, okay, yeah, that makes sense.

09:41:20 2 When you enter into a new system, you know, as you  
09:41:23 3 learn things, you know, you get feedback from the field, you  
09:41:26 4 learn things from team members that are working with the  
09:41:30 5 system. There are things that come up that, you know, you  
09:41:34 6 do want to make adjustments on.

09:41:36 7 We make adjustments to systems that we have all the  
09:41:41 8 time.

09:41:42 9 **Q** So you're saying some may have been done, you don't  
09:41:44 10 know unless you go line by line?

09:41:46 11 **A** Correct.

09:41:48 12 **Q** Now, beyond that, you were also doing an audit to  
09:41:51 13 check on these dispensing, the drugs going out of the  
09:41:53 14 stores, right?

09:41:53 15 **A** Yes.

09:41:54 16 **Q** And on page 2 you'll see this comment, "The purpose of  
09:41:59 17 our review was to identify, evaluate, and test the policies,  
09:42:06 18 procedures, and processes implemented as it pertains to  
09:42:09 19 retail pharmacies as a result of the settlement agreement."

09:42:13 20 Do you see that?

09:42:27 21 **A** Yes.

09:42:28 22 **Q** And if we go then to page 12, if we're looking at the  
09:42:31 23 audit report, it is page 15 of the document itself. It's  
09:42:33 24 the one that starts out with "Target good faith dispensing  
09:42:37 25 policy."

09:42:38 1 Can you find that page, please?

09:42:43 2 **A** Yes.

09:42:45 3 **Q** Now, here we read, "Walgreens has implemented a target  
09:42:54 4 drug good faith dispensing policy for the pharmacists to  
09:42:56 5 follow, and a targeting drug good faith dispensing checklist  
09:43:04 6 for the pharmacists to complete when certain controlled  
09:43:07 7 substance prescriptions are dispensed."

09:43:09 8 Do you see that?

09:43:10 9 **A** I do.

09:43:10 10 **Q** "The target drug good faith dispensing checklist was  
09:43:16 11 created to aid pharmacists in determining whether a  
09:43:20 12 prescription for certain drugs have been written for a  
09:43:25 13 legitimate medical purpose."

09:43:27 14 Do you see that as well?

09:43:27 15 **A** Yes.

09:43:28 16 **Q** And then an issue is identified, isn't it?

09:43:32 17 **A** Yes.

09:43:33 18 **Q** "Based on discussions with store operations  
09:43:39 19 management, district managers and pharmacy supervisors are  
09:43:45 20 expected -- oh, no.

09:43:50 21 Based on discussions with store operations management,  
09:43:54 22 district managers and pharmacy supervisors are expected to  
09:43:57 23 perform store walks of each store in their district and  
09:44:02 24 approximately every 30 to 45 days."

09:44:04 25 Do you see this?



09:44:05 1 **A** Yes.

09:44:05 2 **Q** Now, Mr. Weinberger questioned Mr. Joyce about his  
09:44:11 3 store walks.

09:44:12 4 Do you know Mr. Joyce? I think we said you do.

09:44:15 5 **A** I know who he is, yes.

09:44:17 6 **Q** And Mr. Joyce commented that he would log them into  
09:44:21 7 his personal computer every time he did them.

09:44:23 8 Is that standard policy?

09:44:26 9 **A** As far as I know, yes.

09:44:27 10 **Q** "While specific questions are asked during these store  
09:44:32 11 walks pertaining the target drug good faith dispensing  
09:44:36 12 policy, no corporate reporting is generated to summarize the  
09:44:42 13 results from the visits as the walks were not established as  
09:44:46 14 an audit reporting vehicle."

09:44:50 15 Do you see that?

09:44:50 16 **A** I do.

09:44:51 17 **Q** Do you believe that that was a good policy you had in  
09:44:53 18 place? And by that I mean have the district manager or  
09:44:59 19 pharmacy supervisor perform a store walk and not report back  
09:45:04 20 to corporate on what happened.

09:45:08 21 **A** I do believe that it was a good -- it was an adequate,  
09:45:13 22 and I'll tell you why.

09:45:14 23 Because they are our boots on the ground. They are  
09:45:16 24 the ones that are eyes and ears of what's happening in the  
09:45:20 25 store, what's happening in the community, and they would

09:45:24 1 escalate to my team or to, you know, one of the managers on  
09:45:28 2 my team concerns that they may have. And I had other areas  
09:45:36 3 of checks and balances that I would get reporting on.

09:45:39 4 **Q** Well, actually, it says something different here,  
09:45:42 5 doesn't it?

09:45:43 6 It says, "Based on discussions held with the  
09:45:48 7 compliance and pharmacy services department, there is no  
09:45:51 8 monitoring performed outside of the store walk program to  
09:45:54 9 determine whether the pharmacists across the chain are  
09:45:57 10 adhering to the requirements set forth."

09:46:01 11 Do you see that?

09:46:02 12 **A** That is what it says.

09:46:03 13 **Q** And so when you say "that was adequate," your word,  
09:46:10 14 "adequate," right?

09:46:11 15 **A** Yes.

09:46:11 16 **Q** You said that was adequate "because I had other areas  
09:46:14 17 of checks and balances I would get reporting on."

09:46:18 18 **A** I did.

09:46:18 19 **Q** But yet this says "there is no monitoring performed  
09:46:25 20 outside of the store walk program to determine whether  
09:46:28 21 pharmacists are adhering to the requirements."

09:46:31 22 Do you see that?

09:46:32 23 **A** I do.

09:46:32 24 **Q** And so when I asked you if this was a good policy and  
09:46:38 25 you said you believe it was adequate, isn't truth be told

09:46:43 1 you could have a much better policy to make sure that the  
09:46:47 2 stores are doing what they should be doing?

09:46:51 3 **A** There are other ways from an electronic point of view  
09:46:55 4 that you could have better or easier monitoring.

09:47:01 5 **Q** Well, there's even a recommendation made, actually a  
09:47:04 6 number of them.

09:47:06 7 Do you see that below?

09:47:07 8 **A** I do.

09:47:09 9 **Q** "A monitoring program and related procedures should be  
09:47:13 10 created to provide an adequate level of assurance that  
09:47:18 11 pharmacists across the chain are adhering to the  
09:47:23 12 requirements set forth in the policy."

09:47:25 13 Do you see that?

09:47:26 14 **A** I do.

09:47:26 15 **Q** And when you say, no, no, no, what we had was  
09:47:30 16 adequate, did you disagree with the recommendation of  
09:47:34 17 creating a policy to ensure that pharmacists were adhering  
09:47:39 18 to the requirements?

09:47:40 19 **A** I felt that our policies were adequate, but we did  
09:47:43 20 follow the recommendation from our audit department.

09:47:46 21 **Q** Well, ma'am, you ultimately got an audit that shows  
09:47:51 22 your policies were not adequate, didn't you?

09:47:54 23 **A** Audits happen in place to make sure that compliance  
09:47:57 24 measures and checks and balances are done. So, yes, our  
09:48:00 25 audit department did monitor and go back and check to make

09:48:03 1 sure that our stores were doing what they were supposed to  
09:48:07 2 be doing.

09:48:09 3 **Q** Ma'am, I'm not sure that you answered my question, so  
09:48:11 4 I want to show it to you and see if you're answering it.

09:48:13 5 I said: Ma'am, you ultimately got an audit that shows  
09:48:20 6 your policies were not adequate, didn't you?

09:48:23 7 **A** Oh, correct. They felt it was not adequate, correct.

09:48:27 8 **Q** But not just this audit. You all hired an outside  
09:48:31 9 company to come do an audit, didn't you?

09:48:33 10 **A** You'll have to show me that one to refresh my memory.

09:48:36 11 **Q** Okay. So you had in place, as the person who was in  
09:48:44 12 charge of developing, changing, and improving the policies,  
09:48:54 13 you had in place a policy that you deemed adequate?

09:49:05 14 **A** At the time I deemed it adequate, you are correct.  
09:49:08 15 This was in 2014, like, you know, within a year of when we  
09:49:12 16 launched our good faith dispensing policy.

09:49:13 17 **Q** Right. But you've already said that this is something  
09:49:22 18 that should have been done from the very beginning of time.

09:49:26 19 **A** Did I say that?

09:49:27 20 **Q** Well, all right, maybe you didn't.

09:49:29 21 Don't you think that your pharmacists and your stores  
09:49:33 22 should have had policies in place to monitor the dispensing  
09:49:38 23 of controlled substances whenever you're selling them?

09:49:42 24 **A** We had policies in place that our pharmacists needed  
09:49:45 25 to follow. We had field supervision that reviewed policies

09:49:51 1 and procedures and made sure they were being adhered to when  
09:49:54 2 they went into the stores.

09:49:54 3 **Q** But they were inadequate, weren't they?

09:49:57 4 **A** That's what the audit department found, that it could  
09:50:00 5 be better.

09:50:01 6 **Q** Yes, that they were inadequate, even under the  
09:50:06 7 settlement agreement that y'all had entered into with the  
09:50:07 8 Government, right?

09:50:10 9 **A** You'll have to show me the settlement agreement and  
09:50:13 10 this and, you know, the timing.

09:50:16 11 **Q** The settlement agreement was entered into over a year  
09:50:19 12 earlier.

09:50:20 13 **A** I'm aware of when it was -- when it was agreed to.

09:50:23 14 **Q** And it had specific agreements. Do I need to show you  
09:50:27 15 again what you all agreed to do?

09:50:33 16 You don't remember what you agreed to do with the  
09:50:35 17 Government?

09:50:35 18 **A** I remember there were many pages. And we've improved  
09:50:40 19 upon all of that since that was put in place.

09:50:42 20 **Q** Do you remember what you -- what Walgreens agreed to  
09:50:48 21 do on maintaining a -- it was Plaintiffs' Exhibit 15, on  
09:50:53 22 "maintaining a compliance program in an effort to detect and  
09:50:58 23 prevent diversion of controlled substances, the program  
09:51:01 24 including routine and periodic training of all Walgreens  
09:51:05 25 pharmacy employees responsible for dispensing controlled

09:51:08 1 substances."

09:51:09 2 Do you remember that?

09:51:10 3 **A** I do.

09:51:11 4 **Q** I mean, that's what you were in charge of seeing to,  
09:51:14 5 isn't it?

09:51:14 6 **A** Yes, but this is just one piece of all of that.

09:51:16 7 **Q** Yes, ma'am. And all I'm driving at is this is a piece  
09:51:20 8 where your policies a year and a half later were still  
09:51:25 9 inadequate, weren't they?

09:51:26 10 **A** We made improvements, yes.

09:51:28 11 **Q** They were still inadequate, weren't they?

09:51:31 12 **A** They were inadequate to our audit department. I felt  
09:51:34 13 that the boots on the ground, the pharmacy supervisors and  
09:51:39 14 the district managers who went into the stores to review to  
09:51:42 15 make sure good faith dispensing was done in accordance to  
09:51:45 16 our policy, I felt that they were adequate. The audit  
09:51:52 17 department found them not adequate, and we improved and  
09:51:55 18 enhanced and added additional things.

09:51:58 19 This was just one piece of the puzzle of the work that  
09:52:02 20 my team was doing.

09:52:03 21 **Q** So your approach was, this is adequate because while  
09:52:14 22 the audit department says it's not, you just trusted people  
09:52:18 23 like Mr. Joyce to go through and do that?

09:52:20 24 **A** I did.

09:52:21 25 **Q** Would you be surprised to find out that we've asked

09:52:24 1 for the computer information from Mr. Joyce where he says he  
09:52:29 2 documented this, and it's strangely barren?

09:52:33 3 MS. SWIFT: Objection, Your Honor. That's  
09:52:37 4 incorrect.

09:52:45 5 (At side bar at 9:52 a.m.)

09:52:58 6 THE COURT: All right. What's the objection?

09:53:00 7 MS. SWIFT: I'll move to strike the question,  
09:53:01 8 Your Honor. It's completely inaccurate. Walgreens has  
09:53:06 9 produced numerous store walk documents from Mr. Joyce's  
09:53:08 10 files, from other files, we went back and look at  
09:53:11 11 plaintiffs' request if there was anything else to produce,  
09:53:13 12 and we didn't identify anything except for I think three  
09:53:15 13 documents that don't have anything to do with this.

09:53:17 14 THE COURT: Well, did Walgreens produce the --  
09:53:24 15 did Walgreens produce the records that Mr. Joyce testified  
09:53:27 16 that he maintained?

09:53:30 17 MR. WEINBERGER: Your Honor, last night --

09:53:32 18 MS. SWIFT: I can't hear what the judge is  
09:53:34 19 asking with people talking over.

09:53:36 20 THE COURT: Mr. Joyce said that he maintained  
09:53:37 21 on his personal computer the notes he made of his periodic  
09:53:42 22 store walk-throughs. So my question is, has Walgreens  
09:53:46 23 produced those --

09:53:48 24 MR. WEINBERGER: Your Honor, last night.

09:53:49 25 THE COURT: Hold it. I'm asking Ms. Sullivan.

09:53:49 1 MR. WEINBERGER: Oh, I'm sorry.

09:53:54 2 THE COURT: She made the objection.

09:53:55 3 MS. SWIFT: It's Ms. Swift, for Walgreens,  
09:53:57 4 Your Honor.

09:53:57 5 THE COURT: Ms. Swift.

09:53:57 6 MS. SWIFT: Walgreens has produced all of the  
09:53:58 7 store walk documents that are responsive in this litigation,  
09:54:01 8 including documents from Mr. Joyce's file.

09:54:03 9 MR. WEINBERGER: So she didn't answer your  
09:54:04 10 question, Your Honor. So let me clarify.

09:54:07 11 Last night we got three pages of documents from his  
09:54:15 12 computer. All three pages are actually in substance the  
09:54:22 13 same identical information. They're just different -- it's  
09:54:29 14 a different font. And I can show you the documents.

09:54:35 15 MR. STOFFELMAYR: Judge, can I clarify this?  
09:54:37 16 This is very misleading.

09:54:38 17 THE COURT: No, this is the question I'll  
09:54:40 18 allow. You can show her those documents, you can show her  
09:54:45 19 the documents that were produced and ask her, you know, is  
09:54:50 20 it surprising to you that these are the only documents that  
09:54:52 21 Walgreens has produced for Joyce's walk-throughs. Then you  
09:54:58 22 can come back on redirect.

09:54:59 23 MR. STOFFELMAYR: Because he has to ask the  
09:55:00 24 question about the documents that Walgreens actually  
09:55:03 25 produced which are voluminous.



09:55:05 1 MR. WEINBERGER: Your Honor.

09:55:06 2 MR. STOFFELMAYR: No, let me finish, please.

09:55:07 3 There are voluminous store walk records kept centrally  
09:55:10 4 and at the stores which we produced. What Mr. Joyce  
09:55:13 5 testified about was that he took informal notes as well  
09:55:16 6 which he would e-mail to store managers after a visit.  
09:55:20 7 Those were collected and searched at the beginning of the  
09:55:23 8 case. There is nothing relevant in there. They discuss  
09:55:26 9 things like whether store employees were dressed  
09:55:28 10 appropriately, whether the bathroom is clean.

09:55:30 11 THE COURT: As long as the question is asked,  
09:55:34 12 show her the documents, the only documents that have been  
09:55:36 13 produced that Joyce kept on his computer, all right, and as  
09:55:42 14 long as you ask the question that way, are these -- would it  
09:55:46 15 surprise you that these are the only documents that were  
09:55:48 16 produced pertaining to what Mr. Joyce kept on his personal  
09:55:52 17 computer for his walk-throughs, that's a fair question.

09:55:57 18 MR. STOFFELMAYR: But the question needs to be  
09:55:58 19 asked in a way that's not misleading. To suggest to her  
09:56:01 20 that these are somehow different --

09:56:02 21 THE COURT: Let's move on.

09:56:11 22 (In open court at 9:56 a.m.)

09:56:42 23 MR. LANIER: Your Honor, for purposes of the  
09:56:44 24 record, I'm going to mark this as Plaintiffs' 3000. We may  
09:56:48 25 need to adjust the number later. I just made that one up

09:56:52 1 because we think that it's an available one.

09:56:55 2 And these are three pages that were produced to us  
09:56:58 3 that bear the Bates numbers E-04535266, E-04535260, and  
09:57:20 4 E-04535259.

09:57:36 5 BY MR. LANIER:

09:57:36 6 **Q** Ma'am, after Mr. Joyce testified we requested under  
09:57:42 7 court authority to get the notes from his computer, and I'll  
09:57:45 8 show you what we've marked as Plaintiffs' Exhibit 3000.

09:57:51 9 And in all of the years he was there, these are the  
09:57:55 10 notes that --

09:57:59 11 MS. SWIFT: Your Honor, can we wait until  
09:58:01 12 she's been asked if she's seen this before showing it to the  
09:58:03 13 jury?

09:58:04 14 THE COURT: Overruled.

09:58:05 15 **Q** You'll see that on this page there's a 1/18 note. It  
09:58:16 16 says, district -- or DM.

09:58:17 17 THE COURT: 1/18/19.

09:58:20 18 MR. LANIER: I'm sorry, 1/18/19. Thank you,  
09:58:23 19 Your Honor.

09:58:23 20 **Q** Monday, January 18, 2019, Monday.

09:58:26 21 "DM," do you know what that would stand for in  
09:58:30 22 parlance for your company?

09:58:31 23 **A** I'm assuming district manager.

09:58:33 24 **Q** Okay. "District manager with stores lacking service,  
09:58:38 25 to show me a coaching card win."

09:58:41 1 That's not really going to monitor -- no note they're  
09:58:44 2 monitoring the dispensing of controlled substances, fair?

09:58:49 3 **A** Fair. But I don't know what the reason for the visit  
09:58:52 4 was. The district managers have lots of responsibilities,  
09:58:57 5 and that tells me that they were looking for that specific  
09:59:00 6 topic, but that doesn't mean that good faith dispensing was  
09:59:05 7 not occurring at the store.

09:59:07 8 **Q** Right. This is where -- this is in response to  
09:59:10 9 questions we asked him about his store walk program. This  
09:59:16 10 was the one where each of them every 30 to 45 days they're  
09:59:22 11 supposed to be walking and doing specific questions asked  
09:59:26 12 pertaining to the target drug good faith dispensing policy.

09:59:29 13 Remember?

09:59:30 14 **A** Yeah, that was the recommendation from audit.

09:59:32 15 **Q** Nothing here on target good faith dispensing based on  
09:59:39 16 that one walk there, is there?

09:59:41 17 **A** Correct.

09:59:41 18 **Q** Look at the next one. 1/4/19 Friday. "Visits going  
09:59:48 19 forward will be, review and discuss POTW and how store team  
09:59:54 20 understands and executes it."

09:59:56 21 You got any clue what that is?

09:59:58 22 **A** I do. It's plan of the week.

09:59:59 23 **Q** It's what?

10:00:00 24 **A** It's called plan of the week.

10:00:02 25 **Q** Plan of the week.

10:00:04 1 That's certainly not targeted to how good faith  
10:00:07 2 dispensing is being done, right?

10:00:09 3 **A** Actually, it could have been. We do send out plan of  
10:00:13 4 the weeks on a regular basis that include good faith  
10:00:18 5 dispensing or information about pharmacy that is -- that  
10:00:23 6 happens.

10:00:24 7 I don't know that -- you know, I don't know if that  
10:00:27 8 plan of the week had it, but I am telling you that there are  
10:00:32 9 times throughout the year where we do send out plan of the  
10:00:35 10 weeks that have that information in there for our stores.

10:00:38 11 **Q** All right. "Review and discuss pulse, looking for  
10:00:56 12 wins and opportunities."

10:00:46 13 What's pulse?

10:00:47 14 **A** A pulse is a measure that they look at multiple things  
10:00:54 15 in the store. There's many different items that go into a  
10:01:00 16 store pulse.

10:01:03 17 **Q** Like what?

10:01:04 18 **A** Expired products, customer service. And it's not  
10:01:10 19 just -- it's front of store and pharmacy.

10:01:15 20 **Q** "Review and discuss wins and opportunities with the  
10:01:21 21 customer plan."

10:01:23 22 Not really an audit of targeting good faith dispensing  
10:01:28 23 there, is it?

10:01:30 24 **A** No.

10:01:31 25 **Q** "Look at metrics." That includes waiting time, right?

10:01:36 1 A I don't know if the waiting time was included in 2019.

10:01:41 2 Q Well, it certainly was earlier, right?

10:01:44 3 A It was something that we've measured in the past, yes.

10:01:46 4 Q Look at metrics and have expectations on what you  
10:01:51 5 struggled with so we can come up with a plan to help you."  
10:01:54 6 Right?

10:01:55 7 A Yes.

10:01:55 8 Q And then we've got "HCS, 1/15 and 1/16," with a "Wrap  
10:02:09 9 up 1/17."

10:02:10 10 Do you see that?

10:02:11 11 A I do.

10:02:11 12 Q It's got prescription quality?

10:02:15 13 A It does.

10:02:15 14 Q It's got prescription NPS. What's NPS?

10:02:19 15 A Net promoter score.

10:02:21 16 Q Net promoter score?

10:02:22 17 A Yes.

10:02:22 18 Q Well, you've got to figure that's not controlled  
10:02:25 19 substances, right?

10:02:26 20 A Right.

10:02:28 21 Q Better not be, right?

10:02:30 22 A Correct.

10:02:30 23 Q "Make sure the plan of the week is 100 percent  
10:02:38 24 including the front consumption table in FE."

10:02:45 25 You know what "FE" is, don't you?

10:02:48 1 **A** Front end.

10:02:48 2 **Q** Yeah, that's -- those are the tables up at the front  
10:02:51 3 that get us to buy stuff when we're checking out because  
10:02:54 4 it's right there, right?

10:02:55 5 **A** That's where we put merchandise at the front of the  
10:02:59 6 store, yes.

10:03:00 7 **Q** Yeah. So that part of the plan of the week we at  
10:03:02 8 least know what it is, don't we?

10:03:03 9 **A** For that week down there, yes.

10:03:06 10 **Q** And then the only other note out of his 20-plus years  
10:03:12 11 that we've got on this page is "7/30 area call."

10:03:18 12 Do you see that?

10:03:18 13 **A** I do.

10:03:19 14 **Q** It says, "No longer able to auto fill for controlled  
10:03:26 15 substances."

10:03:28 16 So at least they know that, right?

10:03:31 17 **A** Yes.

10:03:32 18 **Q** "Are there any insurance plans, that's not good faith  
10:03:42 19 targeted questions, is it?

10:03:43 20 **A** No.

10:03:44 21 **Q** "How is the customer plan getting not only to RXM and  
10:03:48 22 staff but all of the staff."

10:03:51 23 Customer plans, not target drug good faith dispensing,  
10:03:54 24 is it?

10:03:55 25 **A** Correct.

10:03:56 1 Q "We need to turn up the heat on digital, front end  
10:03:59 2 with in store orders and prescription texting."

10:04:03 3 Again, that's not checking to see how good good faith  
10:04:07 4 target dispensing is going, is it?

10:04:09 5 A No.

10:04:09 6 Q Those same notes, the 7/30 area call, the 1/4/19  
10:04:22 7 Friday, the wrap up, and the 1/18 are produced on another  
10:04:28 8 page. But that's it for all of his stores for years of  
10:04:32 9 walking.

10:04:34 10 Do you understand that?

10:04:37 11 MS. SWIFT: Objection. That's  
10:04:38 12 mischaracterizing the evidence again.

10:04:39 13 THE COURT: Overruled.

10:04:40 14 A I understand that's what --

10:04:42 15 THE COURT: Hold it.

10:04:43 16 MR. LANIER: Let me clarify, Your Honor.

10:04:45 17 THE COURT: Rephrase -- I'll sustain the  
10:04:46 18 objection the way it was asked.

10:04:48 19 MR. LANIER: I got it, and I caught it at the  
10:04:49 20 same time.

10:04:50 21 BY MR. LANIER:

10:04:50 22 Q Ma'am, when Mr. Joyce testified that he kept these  
10:04:54 23 notes on his computer of his in store walks that he was  
10:04:59 24 doing to check these good faith dispensing issues every 30  
10:05:03 25 to 45 days, in each of his stores, you understand from his

10:05:08 1 computer that's all we got?

10:05:10 2 **A** I understand that he didn't document it. That does  
10:05:13 3 not mean he didn't do it.

10:05:15 4 **Q** Ma'am, you know of all people how important it is to  
10:05:19 5 document, don't you?

10:05:20 6 **A** I do. However, Brian Joyce is a pharmacist, and a  
10:05:24 7 pharmacist can see and recognize things that don't look  
10:05:28 8 correct or don't look right in their stores. Brian Joyce  
10:05:32 9 was a pharmacist. He practiced as a pharmacist. He  
10:05:36 10 practiced as a pharmacy supervisor. That doesn't  
10:05:38 11 necessarily mean that good faith dispensing practices and  
10:05:41 12 following of the policy was not happening.

10:05:44 13 **Q** Well, ma'am, if it's not being documented, you have no  
10:05:49 14 way of knowing quality control, do you?

10:05:52 15 **A** I have no way of knowing quality control coming up to  
10:05:55 16 the support center, but I rely on him and people in his  
10:06:00 17 position to escalate concerns to my team.

10:06:03 18 **Q** Like Mr. Yaeger did with the concerns he had?

10:06:06 19 **A** Of course. And he took those very seriously.

10:06:11 20 **Q** But yet, you told --

10:06:11 21 THE COURT: Hold it. Hold it. Let her finish  
10:06:12 22 her answer.

10:06:14 23 **A** He took those very seriously. We have never told our  
10:06:17 24 store leaders or our, you know, district or field leaders to  
10:06:22 25 tell a pharmacist to fill a prescription.



10:06:24 1 Q But wait a minute, ma'am. You told us yesterday  
10:06:30 2 afternoon that you put a program into place of  
10:06:34 3 businesspeople following up with the pharmacists because you  
10:06:39 4 did have a problem with pharmacists that you did not trust  
10:06:42 5 to fill all the prescriptions they needed to fill.

10:06:45 6 A No, not all the prescriptions they needed to fill. I  
10:06:49 7 had a concern that we had pharmacists that were sloughing  
10:06:52 8 off their responsibility and not filling controlled  
10:06:58 9 substances.

10:06:58 10 They have to -- we're not telling them that they have  
10:07:00 11 to fill a controlled substance, but we are telling them that  
10:07:03 12 they have to go through their due diligence, they can't just  
10:07:06 13 see a prescription and say, you know what, I'm not going to  
10:07:09 14 fill this. They have to go through their due diligence.

10:07:12 15 The point of that report was to ensure that those  
10:07:16 16 pharmacists had the appropriate documentation in the refusal  
10:07:20 17 folder that showed that they did their due diligence before  
10:07:23 18 they refused the prescription.

10:07:25 19 Q So you think it's adequate to have a program in place  
10:07:31 20 that says, "specific questions are to be asked pertaining to  
10:07:38 21 target good faith dispensing on these store walks every 30  
10:07:42 22 to 45 days, but it doesn't need to be documented and nothing  
10:07:46 23 needs to be reported back, and there doesn't need to be any  
10:07:50 24 accountability, and the documentation that people think  
10:07:52 25 they're doing can be what we've just seen from Mr. Joyce.

10:07:56 1 And you are fine with that as the vice president over  
10:07:59 2 this whole area, right?

10:08:01 3 **A** Now that I'm the vice president and I have learned  
10:08:04 4 many things over the years, we have changed our policies,  
10:08:07 5 we've improved things. So at the time, I felt it was  
10:08:11 6 adequate. After the audit, we made changes. We made  
10:08:16 7 changes based on recommendations.

10:08:19 8 **Q** So my question is, looking back will you agree now  
10:08:22 9 that it was inadequate?

10:08:24 10 **A** I would say it could be better. I wouldn't say it was  
10:08:26 11 inadequate because we have eyes and ears at the field level  
10:08:32 12 following up, and they are trained to escalate concerns up  
10:08:35 13 to my team and up to the support center.

10:08:37 14 **Q** And yet, there was an external audit done a year  
10:08:43 15 later, wasn't there?

10:08:44 16 **A** Yes. Or so you tell me anyway.

10:08:49 17 **Q** Well, let's see if I --

10:08:51 18 **A** You have to remind me.

10:08:52 19 **Q** All right. Let's see if I can remind you.  
10:08:54 20 Plaintiffs' Exhibit 15085, please.

10:09:12 21 Do you have that document in front of you?

10:09:14 22 **A** I do.

10:09:14 23 **Q** You will see on the e-mail on the second page that you  
10:09:20 24 started a chain here, Natasha Polster to Ed Bratton and the  
10:09:27 25 others on your team.

10:09:28 1 Do you see that?

10:09:28 2 **A** I do.

10:09:30 3 **Q** And you said, "Please see below. We have been given  
10:09:36 4 time on the monthly district manager webinars. I want an  
10:09:41 5 outline that breaks out the findings of the BCI."

10:09:46 6 Does that ring a bell with you?

10:09:47 7 **A** I do. That stands for a basic control initiative. It  
10:09:51 8 is an internal process that our asset protection team does  
10:09:55 9 where they will follow up on various programs that we have  
10:09:59 10 across our store, including in the pharmacy. And they will  
10:10:03 11 go into stores to check that things that we need to look at  
10:10:08 12 are being followed.

10:10:10 13 **Q** Okay. This is not the T-A-T-A, TATA external analysis  
10:10:18 14 I was going to ask you about. This is one that's internal,  
10:10:21 15 right?

10:10:21 16 **A** Correct.

10:10:21 17 **Q** So we are timewise over a year after those  
10:10:27 18 recommendations had been made; is that right?

10:10:33 19 **A** Yeah, this audit -- or not an audit, it was a basic  
10:10:37 20 control initiative was done six months or however long after  
10:10:40 21 that other one.

10:10:41 22 **Q** Yeah, I think six months is closer to it. The other  
10:10:43 23 was 2014, but it was toward the end of 2014. Right?

10:10:47 24 **A** Okay.

10:10:47 25 **Q** So within the realm of this you'll see a slide deck

10:10:52 1 attached. Good faith dispensing district manager webinar, a  
10:11:00 2 presentation on this one that's got Eric Stahmann, one of  
10:11:03 3 your team on it.

10:11:04 4 Do you see that?

10:11:05 5 **A** Yes.

10:11:09 6 **Q** And if we look at that, you will see that it sets out  
10:11:12 7 the memorandum of agreement, what I read to you before,  
10:11:16 8 right?

10:11:16 9 **A** Yes.

10:11:18 10 **Q** And it even calls it the Administrative Memorandum of  
10:11:22 11 Agreement.

10:11:23 12 And then the next slide says, "In order to check" --  
10:11:29 13 I'll slide this down -- in order to check if stores are  
10:11:32 14 compliant with the policies put in place per the MOA" -- and  
10:11:41 15 again, that's 2013 MOA, right?

10:11:44 16 **A** Yes.

10:11:44 17 **Q** Over two years before.

10:11:51 18 -- "a random sample size audit was conducted in June."

10:11:57 19 Do you see that?

10:11:58 20 **A** I do.

10:11:59 21 **Q** "Roughly 2400 stores" -- that's what, one out of every  
10:12:07 22 four?

10:12:08 23 **A** Approximately.

10:12:09 24 **Q** -- "were audited for compliance on various good faith  
10:12:15 25 dispensing and target good faith dispensing policies and

10:12:20 1 procedures."

10:12:21 2 Do you see that?

10:12:22 3 **A** I do.

10:12:22 4 **Q** Now, these are the very procedures that we were  
10:12:24 5 talking about in the previous year, correct?

10:12:29 6 **A** Yes.

10:12:29 7 **Q** These are the ones where you said the program that we  
10:12:33 8 had was adequate to make sure that this was working, right?

10:12:37 9 **A** At the time, that is exactly what I felt.

10:12:40 10 **Q** And so you had let those policies be in place for  
10:12:45 11 years because you thought it adequate, but when the basic  
10:12:51 12 control initiative was done, the results were unfavorable,  
10:12:57 13 weren't they?

10:12:57 14 **A** That's what it says, yes.

10:12:58 15 **Q** Not only were the results unfavorable, but when target  
10:13:09 16 drug prescriptions, and those are all -- all three of those  
10:13:12 17 are opiates, right?

10:13:13 18 **A** Yes.

10:13:13 19 **Q** When those three opioids are dispensed, pharmacy team  
10:13:21 20 members are responsible for completing the target drug good  
10:13:28 21 faith dispensing checklist.

10:13:28 22 Do you see that?

10:13:29 23 **A** Yes.

10:13:29 24 **Q** "Number of stores that correctly had completed a  
10:13:36 25 target drug good faith checklist attached to the filled

10:13:42 1 target drug prescription hard copies, 59.5 percent

10:13:47 2 compliance rate"?

10:13:49 3 **A** Of a hundred percent compliance, that is correct.

10:13:54 4 **Q** Yeah, in other words, out of 2407 stores that were

10:14:02 5 audited, a little over half, almost 60 percent, were

10:14:07 6 actually doing their job right?

10:14:09 7 **A** On every target drug that the person went in to check

10:14:15 8 on every one of the prescriptions that they pulled there was

10:14:19 9 a checklist attached to in over 1400 stores.

10:14:25 10 **Q** Is that yes, they were doing their job in almost 60

10:14:30 11 percent?

10:14:30 12 **A** Yes.

10:14:31 13 **Q** So that means over 40 percent weren't doing their job?

10:14:37 14 **A** Over 40 percent did not have a hundred percent

10:14:40 15 compliance. But remember, this is a hundred percent

10:14:42 16 compliance to the policy. The target drug good faith

10:14:47 17 dispensing checklist is not a requirement by law. It was a

10:14:49 18 policy that I put in place. And of course I would love and

10:14:53 19 wanted to see a hundred percent compliance, and that is why

10:14:57 20 I wanted to have that webinar, I wanted to ensure the field

10:15:02 21 leaders knew what to look for when they went into the

10:15:04 22 stores.

10:15:06 23 **Q** Ma'am, you didn't answer my question.

10:15:08 24 **A** I did answer the question.

10:15:09 25 **Q** No, ma'am. My question was, over 40 percent weren't

10:15:12 1 doing their job. Is that true or false?

10:15:14 2 **A** That is false. Over 40 percent were not 100 percent  
10:15:19 3 compliant.

10:15:20 4 Go to the next page.

10:15:21 5 **Q** I will. Hold on one second.

10:15:24 6 Are you saying -- let's do this one first and we'll go  
10:15:30 7 to the next one.

10:15:32 8 Should stores correctly complete the checklist and  
10:15:38 9 attach it to the filled prescription? Should they? Is that  
10:15:43 10 part of their job?

10:15:44 11 **A** Per policy, yes.

10:15:46 12 **Q** Right, that's my question.

10:15:48 13 **A** Yes. It's a policy, not a regulation.

10:15:52 14 THE COURT: Hold it, Ms. Polster. It would  
10:15:55 15 work a lot better if you let Mr. Lanier complete his  
10:15:57 16 question, and then I'll make sure that he lets you complete  
10:15:59 17 his answer.

10:16:00 18 THE WITNESS: Thank you.

10:16:01 19 THE COURT: Otherwise, it's not going to work.

10:16:04 20 **Q** This whole thing is put together as what Walgreens  
10:16:08 21 agreed to do in the memorandum of agreement with the  
10:16:12 22 Government. And this was to make sure to check if stores  
10:16:16 23 are compliant with the policies and procedures put in place  
10:16:24 24 per the agreement with the Government.

10:16:25 25 Do you remember that?

10:16:27 1 **A** I do.

10:16:28 2 **Q** So should stores be compliant? Is that part of their  
10:16:31 3 job?

10:16:31 4 **A** Yes.

10:16:32 5 **Q** Okay. So part of job is to be compliant, right?

10:16:38 6 **A** Yes.

10:16:39 7 **Q** And is it true that over 40 percent were not  
10:16:42 8 compliant?

10:16:43 9 **A** Over 40 percent were not compliant a hundred percent  
10:16:47 10 of the time.

10:16:47 11 **Q** Well, I understand that, ma'am.

10:16:51 12 So a hundred -- I mean over 40 percent were not  
10:16:54 13 compliant, and that compliance was part of their job;  
10:17:00 14 therefore, over 40 percent weren't doing their job, right?

10:17:04 15 **A** I don't agree with the way that is characterized. And  
10:17:08 16 you will get to that on the next page. They were not --  
10:17:11 17 there was not a target drug good faith dispensing checklist  
10:17:14 18 attached to every prescription that they were pulled in 40  
10:17:19 19 percent of the stores. Of course, I would want a hundred  
10:17:22 20 percent, but that does not mean that good faith dispensing  
10:17:24 21 was not happening at that location.

10:17:26 22 **Q** All right. Their job is to comply. Over 40 percent  
10:17:34 23 did not comply.

10:17:36 24 You'll at least agree with that, all right? Is that  
10:17:40 25 fair?



10:17:41 1 MS. SWIFT: Objection. It mischaracterizes  
10:17:42 2 her testimony.

10:17:43 3 THE COURT: Hold it. There's a question.  
10:17:45 4 We'll let the witness answer.

10:17:46 5 **A** I don't agree with the way you're asking the question.  
10:17:49 6 Over 40 percent did not get a hundred percent compliance  
10:17:52 7 where a checklist was put on every hard copy that was asked  
10:17:57 8 for by policy, but that does not mean that good faith  
10:18:01 9 dispensing was not happening.

10:18:04 10 **Q** Well, but no, the compliance that I'm asking about is  
10:18:08 11 not whether or not the prescription should have gone out.  
10:18:12 12 We've got no way of knowing that.

10:18:13 13 **A** Correct.

10:18:14 14 **Q** The compliance I'm asking about is with the policies  
10:18:18 15 and procedures put in place, and that policy and procedure  
10:18:21 16 says you complete this checklist and attach it to the  
10:18:25 17 prescription, right?

10:18:26 18 **A** Walgreens' policy for good faith dispensing for the  
10:18:30 19 checklist, yes. But that policy was not a requirement of  
10:18:35 20 the MOA.

10:18:39 21 **Q** The requirement of the MOA was put a plan in place to  
10:18:42 22 do it?

10:18:43 23 **A** To have --

10:18:44 24 **Q** That's the plan and policy you put in place to do it,  
10:18:47 25 right?

10:18:47 1 **A** It was done --

10:18:48 2 MS. SWIFT: Objection.

10:18:48 3 **A** -- before the MOA was signed.

10:18:50 4 **Q** You knew what was coming down the pike. We've seen  
10:18:53 5 that from the e-mails where you were commenting on it.

10:18:57 6 Remember? Do I need to --

10:19:00 7 **A** No, you don't need to show me again.

10:19:03 8 **Q** Okay. So the stores, part of their job was to be  
10:19:08 9 compliant with the policies and procedures, and one of those  
10:19:14 10 policies and procedures was to complete this checklist and  
10:19:16 11 attach it to prescriptions, true?

10:19:18 12 **A** One of those policies, yes.

10:19:19 13 **Q** And if their job was to comply with that, you know  
10:19:22 14 over 40 percent did not comply?

10:19:24 15 MS. SWIFT: Objection. Asked and answered  
10:19:25 16 several times.

10:19:26 17 **A** They were not 100 percent compliant, yes.

10:19:32 18 **Q** Thank you. Now we can go to the next sheet. This is  
10:19:35 19 the one you wanted me to turn to, right?

10:19:37 20 **A** No, it was the next one after.

10:19:39 21 **Q** Let's do this one anyway.

10:19:40 22 "If the pharmacist determines that a target drug  
10:19:46 23 prescription does not meet good faith dispensing  
10:19:47 24 requirements, a copy of the refused prescription and  
10:19:53 25 completed target drug good faith dispensing checklist must

10:19:56 1 be in the designated refusal file folder."

10:20:02 2 Do you see that?

10:20:03 3 **A** Yes.

10:20:03 4 **Q** This is one of those places you said before it doesn't  
10:20:09 5 matter if we delete the comments because you can go back and  
10:20:12 6 look in the folders, right?

10:20:14 7 **A** Yes.

10:20:14 8 **Q** So these folders that you can go back and look at  
10:20:18 9 where it doesn't matter if the comments are deleted has a  
10:20:22 10 statistic, don't they?

10:20:27 11 "Number of stores that correctly had completed that  
10:20:32 12 checklist attached to a refused prescription."

10:20:36 13 Do you see that?

10:20:36 14 **A** Yes.

10:20:36 15 **Q** 75.7 percent compliance rate, right?

10:20:42 16 **A** A 75.7 percent compliance rate that the target drug  
10:20:50 17 good faith dispensing checklist that they used was attached  
10:20:53 18 to the refused prescription. That does not mean that there  
10:20:57 19 weren't refused prescriptions in that file. They just did  
10:21:00 20 not have the checklist attached to it.

10:21:03 21 **Q** Didn't follow the policy?

10:21:05 22 **A** Not exactly, they did not follow the policy.

10:21:07 23 **Q** Not -- no, don't say not exactly.

10:21:10 24 They didn't follow the policy, did they?

10:21:12 25 **A** Their checklist was not attached. However, if the

10:21:15 1 hard copy had notes on it, it was okay for them to do it  
10:21:21 2 that way as long as there was a refused prescription in  
10:21:23 3 there.

10:21:23 4 **Q** Okay. So your position and the policy for your  
10:21:28 5 company coming from your job was it doesn't really matter if  
10:21:33 6 you do that or not as long as you've got a note on the  
10:21:37 7 prescription. Is that what you're saying?

10:21:39 8 **A** I'm saying that there are times where the good faith  
10:21:42 9 dispensing checklist wasn't attached; however, there may  
10:21:45 10 have been notes on the hard copy that was written in there  
10:21:47 11 that gave the leadership or whoever was looking information  
10:21:53 12 to show that the pharmacist did their due diligence and  
10:21:57 13 their good faith, correct.

10:21:58 14 **Q** So your policy that you're saying under oath right now  
10:22:02 15 for all the Walgreens people around the United States is you  
10:22:06 16 don't really need to do this as long as you make a note on  
10:22:08 17 the prescription. Is that what you're saying?

10:22:10 18 MS. SWIFT: Objection. Mischaracterizes.

10:22:11 19 THE COURT: Overruled.

10:22:13 20 **A** What I'm saying is is that a checklist is in the  
10:22:17 21 policy, yes. We want checklists done on each time.

10:22:20 22 What I know to be true is based on this and feedback  
10:22:24 23 that we had from the stores was that a checklist was not  
10:22:27 24 always used, but notes were put on the hard copy and put  
10:22:31 25 into the refusal file.

10:22:33 1 Q Okay. With due respect, ma'am, did you read the next  
10:22:36 2 page of this?

10:22:36 3 A I did.

10:22:38 4 Q The next page doesn't say what you said. It says the  
10:22:42 5 exact opposite, doesn't it?

10:22:45 6 Look, read with me. "If the pharmacist determines  
10:22:49 7 that a target drug prescription does not meet GFD  
10:22:53 8 requirements, a copy of the refused prescription," what's  
10:22:59 9 the next word?

10:23:00 10 A "And completed checklist."

10:23:03 11 Q "And completed checklist."  
10:23:06 12 What's the next word?

10:23:07 13 A "Must be designated in the refusal file folder."

10:23:10 14 Q "Must be in the designated refusal file folder."  
10:23:14 15 Do you see that?

10:23:14 16 A I do.

10:23:14 17 Q Doesn't say it's optional, does it?

10:23:16 18 A It doesn't.

10:23:17 19 Q Doesn't say just put the note on the prescription,  
10:23:20 20 does it?

10:23:20 21 A It doesn't.

10:23:20 22 Q Doesn't say we're not too worried about it because we  
10:23:24 23 trust our pharmacist, does it?

10:23:26 24 A It doesn't say that.

10:23:28 25 Q Doesn't say this is a policy that we don't really care

10:23:31 1 about, does it?

10:23:32 2 **A** I never once said that we didn't care about that  
10:23:34 3 policy.

10:23:35 4 **Q** It says it must be done, doesn't it?

10:23:38 5 **A** Yes, it does.

10:23:39 6 **Q** And then it says, "After reviewing the refusal file  
10:23:45 7 folder for calendar year 2015, how many refused  
10:23:48 8 prescriptions were identified?"

10:23:49 9 Do you see that?

10:23:50 10 **A** I do.

10:23:50 11 **Q** You had over a thousand stores that never refused a  
10:23:53 12 prescription. Do you see that?

10:23:55 13 **A** And they didn't need to refuse a prescription. You  
10:23:58 14 have to understand the entire situation, the community, the  
10:24:01 15 store, the prescriptions that they see. They may have not  
10:24:05 16 had a reason to fill that the prescription that they were  
10:24:08 17 looking at and ready to dispense did not meet good faith  
10:24:11 18 dispensing.

10:24:11 19 **Q** Well, when you have only a 75 percent compliance rate  
10:24:18 20 and 25 percent aren't complying, you can't really tell when  
10:24:21 21 you go back and look at these that maybe refused two to  
10:24:25 22 five, maybe did six to ten, true?

10:24:29 23 **A** It's not my job to ensure whether or not the  
10:24:33 24 pharmacists are doing their due diligence. We have to trust  
10:24:35 25 our pharmacists to make decisions based on the prescription

10:24:39 1 that they fill.

10:24:41 2 And what I'm saying is, you're right, I don't know  
10:24:44 3 because I'm not there. That is why we have field  
10:24:47 4 leadership, and that is why we have oversight of our stores.

10:24:50 5 **Q** The guys that are walking through every 30 to 45 days  
10:24:53 6 making entries in their computers, like Mr. Joyce?

10:24:56 7 **A** That's one level of leadership.

10:24:59 8 **Q** Because you don't have any greater accountability back  
10:25:03 9 in that time zone on those store visits, do you?

10:25:06 10 **A** We have the district managers, we have the store  
10:25:15 11 managers are there, we have healthcare supervisors. We have  
10:25:18 12 multiple levels of leadership that are in our stores every  
10:25:20 13 day.

10:25:20 14 **Q** And when you say that these 1,106 [sic] stores that  
10:25:27 15 had zero refused prescriptions, when you say, well, that's  
10:25:29 16 probably okay because they were probably all legitimate.  
10:25:32 17 Remember? That's what you said?

10:25:33 18 **A** That's what I said.

10:25:34 19 **Q** But we won't know that either because that's where the  
10:25:39 20 over 40 percent aren't filling out the checklist comes in.  
10:25:43 21 You can't look at the checklist over 40 percent of the time  
10:25:46 22 to see that, because they didn't do it, right?

10:25:49 23 **A** Right.

10:25:50 24 **Q** "Leadership should be checking for compliance on a  
10:26:04 25 regular basis."

10:26:06 1 That's a leadership issue, isn't it?

10:26:09 2 **A** We are asking our leaderships when they go into the  
10:26:12 3 stores that they are checking for the compliance with  
10:26:17 4 policy, yes.

10:26:18 5 **Q** But, ma'am, leadership goes beyond the store level,  
10:26:21 6 doesn't it?

10:26:21 7 **A** Oh, yes, yeah. That's the district --

10:26:27 8 **Q** Leadership -- my fault.

10:26:27 9 Leadership on this goes to you, right?

10:26:31 10 **A** That is not -- so my team was giving the direction,  
10:26:38 11 and the leadership was being referred to as the field  
10:26:42 12 leadership in the field.

10:26:44 13 **Q** Ma'am, we're in 2015 at this point, right?

10:26:46 14 **A** Yes.

10:26:47 15 **Q** You have become -- or you're shortly becoming senior  
10:26:53 16 executive vice president in charge of pharmaceutical  
10:26:56 17 compliance, execution of compliance-related tasks and the  
10:27:02 18 overall strategy, correct?

10:27:03 19 **A** Correct.

10:27:04 20 **Q** And before that, you were developing, changing, and  
10:27:10 21 improving the policies and procedures around this controlled  
10:27:13 22 substance dispensing, right?

10:27:14 23 **A** Yes.

10:27:14 24 **Q** So within the framework of that job, leadership on  
10:27:19 25 compliance goes back to you, doesn't it? The buck stops in



10:27:27 1 your seat, right?

10:27:28 2 **A** Yes, but that is not what this PowerPoint deck -- this  
10:27:31 3 PowerPoint deck was intended for the audience in the field.

10:27:36 4 **Q** But this PowerPoint deck says "Results were  
10:27:42 5 unfavorable," doesn't it?

10:27:43 6 **A** It does.

10:27:44 7 **Q** This is a sign that the system you've got in place is  
10:27:49 8 not working, right?

10:27:51 9 **A** It is a sign that we need to make improvements, and we  
10:27:56 10 have made improvements.

10:27:57 11 **Q** Well, this is 2015. You're two years after the  
10:28:03 12 agreement, right?

10:28:04 13 **A** Correct. Again, one example of improvements that  
10:28:11 14 we've made, but this is not the only thing that we looked at  
10:28:15 15 around controlled substance dispensing.

10:28:30 16 **Q** Now, at this same time y'all are looking at the  
10:28:40 17 economic consequences of your good faith dispensing, aren't  
10:28:44 18 you?

10:28:46 19 **A** I'll have you refresh my memory.

10:28:49 20 **Q** Plaintiffs' Exhibit 19574, please.

10:29:14 21 MR. LANIER: Oh, Your Honor, it is 10:30.

10:29:17 22 Before I do this --

10:29:18 23 THE COURT: I was going to inquire.

10:29:20 24 Okay. Ladies and gentlemen, we'll take our mid  
10:29:22 25 morning break. The usual admonitions. And then we'll pick

10:29:26 1 up in 15 minutes with Ms. Polster's testimony.

10:30:02 2 (Recess taken at 10:30 a.m.)

10:49:10 3 (Jury present in open court at 10:49 a.m.)

10:49:14 4 THE COURT: Please be seated.

10:49:15 5 Mr. Lanier, you may resume.

10:49:17 6 MR. LANIER: Thank you.

10:49:17 7 THE COURT: And Ms. Polster, you're still  
10:49:18 8 under oath from yesterday. Thank you.

10:49:20 9 MR. LANIER: Thank you, Judge.

10:49:22 10 BY MR. LANIER:

10:49:23 11 **Q** Ms. Polster, right before the break you said, in  
10:49:28 12 answer to one of my questions: "It's not my job to ensure  
10:49:35 13 whether or not the pharmacists are doing their due  
10:49:38 14 diligence. We have to trust our pharmacists to make  
10:49:40 15 decisions based on the prescription that they fill."

10:49:45 16 Did you mean to say that?

10:49:50 17 **A** We do, we trust our pharmacists to fill their  
10:49:52 18 prescriptions based on -- and ensuring their good faith  
10:49:58 19 dispensing practices and their corresponding responsibility.

10:49:59 20 **Q** Well, I'll talk about that in a moment. The first  
10:50:03 21 part, though, is what I was asking about.

10:50:05 22 "It's not my job to ensure whether or not the  
10:50:09 23 pharmacists are doing their due diligence?

10:50:12 24 **A** You're right, that is incorrect.

10:50:14 25 **Q** That is your job, isn't it?

10:50:17 1 **A** Yes, it is part of my job, yes.

10:50:19 2 **Q** And when you say "we have to trust our pharmacists to  
10:50:21 3 make decisions based on the prescriptions they fill," that  
10:50:26 4 is unless they're underfilling prescriptions, right?

10:50:30 5 **A** No, that is not at all what that report means.

10:50:33 6 **Q** No, no, no, that -- I'm not referencing that report.  
10:50:36 7 I'm referencing the one we talked about yesterday where you  
10:50:40 8 said here are pharmacists that aren't filling enough C-II  
10:50:46 9 prescriptions, so we need to have businesspeople review  
10:50:50 10 them, look at the prescriptions, get them to take our  
10:50:54 11 education, and try to get their -- those are not ones you're  
10:51:03 12 trusting, are you?

10:51:04 13 **A** As part of any program that we implement, we try to  
10:51:09 14 ensure that we have follow up to ensure that things are  
10:51:11 15 being done correctly.

10:51:13 16 **Q** But --

10:51:13 17 **A** Part of that was -- and part of my responsibility was  
10:51:17 18 I was getting complaints that were coming up from pharmacy  
10:51:22 19 personnel and leadership saying, this guy I'm working with  
10:51:26 20 won't fill any of the hard prescriptions, they just flat  
10:51:32 21 out, straight up refuse prescriptions without even looking  
10:51:35 22 at them.

10:51:37 23 We did run reports and we -- I don't even know if we  
10:51:43 24 use them today, but we did run those reports to ensure that  
10:51:46 25 we didn't have pharmacists sloughing their responsibility

10:51:50 1 and not filling prescriptions that were difficult just  
10:51:52 2 because they had to take extra steps that were required.

10:51:55 3 **Q** With due respect, I don't want to rehash what we did  
10:51:59 4 yesterday. But these are the same ones that didn't say in  
10:52:03 5 your e-mail or in your writing they're not filling any.  
10:52:07 6 These are the ones that weren't filling enough. Remember?

10:52:11 7 **A** It didn't say enough, did it?

10:52:13 8 **Q** Well --

10:52:14 9 **A** It said, all controlled substances or something like  
10:52:20 10 that. And what was intended in that is that you can't just  
10:52:23 11 fill your, you know, phenobarb prescription, which is a  
10:52:28 12 controlled substance, and not fill any pain medication that  
10:52:30 13 comes in.

10:52:33 14 **Q** The specific document, Plaintiffs' 19601, said  
10:52:38 15 "they're not dispensing a lot."

10:52:39 16 **A** A lot of controlled substances.

10:52:41 17 **Q** Doesn't say they're not dispensing any?

10:52:45 18 **A** Correct.

10:52:45 19 **Q** So that we're clear on that.

10:52:47 20 But my point is --

10:52:48 21 MS. SWIFT: Objection. Did she finish her  
10:52:51 22 answer?

10:52:51 23 THE COURT: Did you finish your answer, ma'am?

10:52:58 24 THE WITNESS: (Indicating).

10:52:58 25 MS. SWIFT: Sorry. I thought he had cut her

10:52:59 1 off.

10:53:00 2 THE COURT: Ask another question.

10:53:04 3 Q Thank you.

10:53:05 4 So that we're clear on that, you trust the pharmacists  
10:53:12 5 to never refuse a prescription. But the pharmacists who  
10:53:19 6 refuse a lot of prescriptions you don't trust?

10:53:22 7 A That is not at all what that is. They are to -- we  
10:53:27 8 are to make sure that those pharmacists have the  
10:53:30 9 documentation for those refusals. They can't just say,  
10:53:34 10 sorry, I'm not filling this prescription and leave it for  
10:53:37 11 the next guy.

10:53:38 12 Q Well, you ought to also make sure that they're  
10:53:42 13 trained, right?

10:53:44 14 A Training is part of it.

10:53:47 15 Q Because if we go back to Plaintiffs' Exhibit Number  
10:53:51 16 25492, which was that internal audit report that you and I  
10:53:55 17 went through. Remember that?

10:53:57 18 A Yes.

10:53:58 19 Q If you'll look on page 17 in regards to this, it talks  
10:54:08 20 about "a detailed review of the training data calendar year  
10:54:13 21 2013 and 2014."

10:54:14 22 Do you see that?

10:54:15 23 A Yes.

10:54:15 24 Q "2013, IA" -- and that's an internal audit?

10:54:28 25 A Yes.

10:54:28 1 Q -- "noted that approximately 180 active employees at  
10:54:32 2 the time of our testing (September 2014) had not completed  
10:54:37 3 the good faith dispensing training, and that several  
10:54:40 4 thousand active employees had not completed the good faith  
10:54:46 5 dispensing policy."

10:54:48 6 Do you see that?

10:54:49 7 A Policy acknowledgement.

10:54:53 8 Q "At the time of our testing, over 35,000 employees had  
10:54:59 9 not completed the good faith dispensing training that was  
10:55:02 10 assigned in early October and required to be completed by  
10:55:06 11 November 7."

10:55:08 12 Do you see that?

10:55:09 13 A I do.

10:55:09 14 Q And yet, 12 days later, 35,000 hadn't done it, right?

10:55:15 15 A Correct.

10:55:16 16 Q So these people that you're trusting are people that  
10:55:22 17 you're not training the way your policies say you should,  
10:55:25 18 right?

10:55:26 19 A No, I disagree with what you're saying.

10:55:29 20 The good faith dispensing training went to all store  
10:55:33 21 and pharmacy -- or store leadership, field leadership, and  
10:55:37 22 pharmacy technicians and pharmacists.

10:55:42 23 The pharmacists are required by their good faith  
10:55:45 24 dispensing obligations under the CSA to ensure that they are  
10:55:49 25 filling prescriptions for legitimate medical purpose. The

10:55:54 1 training was not completed by every single one of our  
10:55:57 2 employees on time, yes, I agree with that.

10:55:59 3 **Q** Okay. This is the whole issue of monitoring good  
10:56:04 4 faith dispensing training completion, right?

10:56:06 5 **A** Right.

10:56:07 6 **Q** And again, this internal audit says not getting it  
10:56:11 7 done, right?

10:56:14 8 **A** Two weeks after the due date, correct, we were not a  
10:56:19 9 hundred percent complete.

10:56:20 10 **Q** Well, not just not a hundred percent. Over 35,000  
10:56:25 11 employees?

10:56:26 12 **A** Yeah, out of I can't remember how many because it was  
10:56:28 13 way more than pharmacists, technicians, store personnel,  
10:56:32 14 field personnel.

10:56:39 15 **Q** Okay. Now, within the framework, then, of this, let's  
10:56:42 16 talk about some things that were being completed and where  
10:56:44 17 y'all were paying attention to detail, okay?

10:56:52 18 **A** Okay.

10:56:53 19 **Q** And in that regard, right before the break I had you  
10:56:58 20 handed Plaintiffs' Exhibit 19574. I would hope during the  
10:57:02 21 break you've had a chance to look at it.

10:57:04 22 **A** I did.

10:57:05 23 **Q** This is a document that has got you as a recipient,  
10:57:11 24 according to the first page. Correct?

10:57:13 25 **A** Yes.

10:57:13 1 Q And the subject on this is "Targeted drugs for good  
10:57:22 2 faith dispensing," right?

10:57:22 3 A Yes.

10:57:22 4 Q And what y'all were finding out is the new program  
10:57:30 5 you'd put in place, whether it was thorough or not is not  
10:57:36 6 addressed, but that new program was affecting the budget,  
10:57:42 7 wasn't it?

10:57:44 8 A I don't agree with what you were saying there in terms  
10:57:47 9 of affecting the budget. I think --

10:57:49 10 Q Well, let -- I'm sorry.

10:57:51 11 Let me show you, see if that would help.

10:57:54 12 A Sure.

10:57:55 13 Q If you look on page 2, there's an e-mail on page 2  
10:57:59 14 from Daniel Doyle.

10:58:01 15 You know him, right?

10:58:02 16 A Yes.

10:58:02 17 Q It's to Kermit Crawford, with a copy to Rex Swords,  
10:58:10 18 right?

10:58:10 19 A Right.

10:58:10 20 Q And this is before the e-mail comes to you, right?

10:58:13 21 A Yes.

10:58:14 22 Q "Kermit, we budgeted a negative \$24 million impact  
10:58:22 23 from controlled substance Schedule II drugs in fiscal year  
10:58:30 24 2014."

10:58:30 25 Do you see that?



10:58:31 1 **A** I do.

10:58:34 2 **Q** Those are drugs that include the opiates that we're  
10:58:36 3 talking about, right?

10:58:37 4 **A** Yes.

10:58:37 5 **Q** "We're actually seeing closer to a negative \$44  
10:58:45 6 million of impact."

10:58:49 7 Do you see that as well?

10:58:49 8 **A** I do.

10:58:50 9 **Q** "The impact for the full year of the C-IIs that are  
10:58:55 10 not impacted by GFD is about 7 to 9 million."

10:59:01 11 Do you see that as well?

10:59:03 12 **A** I do.

10:59:03 13 **Q** Now, that tells you that -- a number of things,  
10:59:10 14 doesn't it?

10:59:10 15 **A** It tells me that finance did not budget correctly.  
10:59:18 16 When a corporation as large as Walgreens goes through the  
10:59:22 17 budget process, they budget sales from front of store, from  
10:59:27 18 pharmacy, and they have to plan very far in advance. And  
10:59:32 19 they did not budget correctly.

10:59:36 20 And this e-mail to the who was then our president is  
10:59:39 21 saying, we're seeing a bigger impact on controlled  
10:59:44 22 substances, and that is exactly what I would expect to have  
10:59:48 23 happened during that time.

10:59:49 24 **Q** Yeah, that's my point though.

10:59:51 25 Doesn't that tell you that the system y'all had in

10:59:54 1 place until 2014 was overdispensing drugs?

11:00:01 2 **A** No.

11:00:01 3 **Q** Because when you put targeted good faith dispensing,  
11:00:04 4 even with inadequate training, when you put it in place, all  
11:00:08 5 of a sudden the number of scripts you all fill declines,  
11:00:13 6 right?

11:00:13 7 **A** There are multiple reasons why the number of  
11:00:15 8 prescriptions declined. I think, yes, our policy may have  
11:00:18 9 had something to do with it, but we were seeing very, very  
11:00:21 10 big decreases across the entire industry, not just  
11:00:24 11 Walgreens, across our entire industry.

11:00:26 12 The doctors started getting on board, the DEA was  
11:00:28 13 taking action against prescribers. It was all over the  
11:00:33 14 news. We had hospital systems putting their own policies in  
11:00:36 15 place on how many controlled substances doctors could  
11:00:39 16 dispense. The entire industry was decreasing.

11:00:43 17 **Q** But you all put out a new program you piloted in Las  
11:00:48 18 Vegas and Orlando, didn't you?

11:00:50 19 **A** I don't know what this is. This is not one of my -- I  
11:00:53 20 see it, but I don't know enough to be able to speak to it.

11:01:01 21 **Q** Well, I mean, you got this, right?

11:01:03 22 **A** I did get it.

11:01:04 23 **Q** And you do know enough to say that y'all did a pilot  
11:01:07 24 program. We discussed it yesterday. In Las Vegas and  
11:01:12 25 Orlando, right?

11:01:15 1 **A** Okay. So yes.

11:01:17 2 **Q** And so that pilot program where you did it in  
11:01:21 3 Las Vegas and Orlando have seen a decrease in over 30  
11:01:26 4 percent of prescriptions in the last 18 months.

11:01:29 5 Do you see that?

11:01:29 6 **A** I do.

11:01:32 7 **Q** So don't you believe that your program, however  
11:01:37 8 adequate or inadequate it may have been, was at least in  
11:01:40 9 some measure reducing the number of scripts that are being  
11:01:44 10 filled?

11:01:44 11 **A** Oh, yes.

11:01:46 12 **Q** Which tells you that if the program had been in place  
11:01:51 13 10 years earlier, you could have reduced the number of  
11:01:55 14 scripts 10 years sooner, true?

11:01:56 15 **A** There was a lot changing in the industry from 10 years  
11:02:00 16 ago. Hindsight is always 20/20.

11:02:03 17 **Q** That wasn't my question, ma'am. Can you answer my  
11:02:05 18 question?

11:02:05 19 **A** It is possible, but it is not -- I can't definitively  
11:02:11 20 say.

11:02:12 21 I think the prescribing practices in 2006 versus what  
11:02:14 22 happened in 2012, 2013 from prescribers changed dramatically  
11:02:20 23 on the number of prescriptions that were coming in to retail  
11:02:23 24 pharmacies.

11:02:23 25 **Q** So you're saying that maybe it's not your program that

11:02:26 1 was working, it's that the doctors were writing less?

11:02:28 2 **A** No, I think my program absolutely had something to do  
11:02:32 3 with it, but I also think the prescribers were starting to  
11:02:36 4 decrease the amount of prescriptions they were writing.

11:02:38 5 **Q** But if your program had something to do with it, then  
11:02:41 6 that leaves me with my question.

11:02:44 7 Isn't it true that if you'd put such a program in  
11:02:47 8 place earlier, you would have reduced the scripts earlier?

11:02:53 9 **A** I don't know that to be true because we were not  
11:02:56 10 seeing chronic pain patients coming in to Walgreens. We  
11:03:01 11 were seeing acute, we were seeing end of life. But the  
11:03:05 12 chronic pain patients that we were starting to see an  
11:03:08 13 increase between 2010 and 20 whenever was just starting.  
11:03:14 14 And that was when I put that policy in place and we started  
11:03:18 15 to see a decrease.

11:03:19 16 But we were seeing it in the industry, not just  
11:03:21 17 Walgreens.

11:03:22 18 **Q** Well, you understand the industry was being put on  
11:03:28 19 notice by the DEA just as much as you were, right?

11:03:30 20 **A** Absolutely. It was the entire industry.

11:03:34 21 **Q** The industry was at Joe Ran's [sic] presentation that  
11:03:38 22 we saw yesterday where the people in your company that took  
11:03:41 23 notes of it, said if the pharmacists would do their job, we  
11:03:45 24 wouldn't have this problem, right?

11:03:46 25 **A** That was his words.

11:03:47 1 Q And the industry's present there, right?

11:03:50 2 A The pharmacy portion. I don't know about the  
11:03:53 3 prescribers being in those.

11:03:56 4 Q This is the pharmacy portion, that's what I'm talking  
11:03:59 5 about.

11:04:00 6 A Okay.

11:04:00 7 Q So finally, 2014, 2015, '16, y'all are putting  
11:04:07 8 programs in place. But if you'd put them in place earlier,  
11:04:11 9 we wouldn't have had these problems in 2008, '9, '10, '11,  
11:04:20 10 '12 that we had, true?

11:04:21 11 A I don't know that to be true because the prescription  
11:04:24 12 prescribing had changed dramatically. I don't know if my  
11:04:26 13 policy that I put in place in 2013 would have made a  
11:04:31 14 difference because we weren't seeing those chronic pain  
11:04:35 15 patients come in to Walgreens as much as we were in the  
11:04:41 16 2012, '10, '12, 11, whenever those time frames were.

11:04:48 17 Q But even still, if we continue on in this timeline, in  
11:04:52 18 2015 y'all are still dispensing the trinity, aren't you?

11:04:55 19 A In some cases the trinity is appropriate. And, yes,  
11:04:58 20 it is being dispensed.

11:05:00 21 Q So when others have testified that the trinity should  
11:05:02 22 not be dispensed under any reason at all, you disagree with  
11:05:09 23 that, and the policy at Walgreens is it's an okay thing to  
11:05:13 24 do?

11:05:13 25 A It is -- I didn't say that it was an okay thing to do.

11:05:17 1 I said it was -- in our policies, they must be doing their  
11:05:21 2 due diligence around dispensing a trinity prescription.  
11:05:24 3 They have to understand what is happening with that  
11:05:27 4 particular patient as to why the prescriber would be  
11:05:31 5 prescribing it.

11:05:32 6 **Q** And the trinity is an opioid, a benzodiazapine, and a  
11:05:38 7 muscle relaxer, right?

11:05:39 8 **A** Yes.

11:05:40 9 **Q** And you understand that's a bold print major red flag,  
11:05:50 10 right?

11:05:51 11 **A** Yeah, you want to be careful if you're going to use  
11:05:53 12 something like that to ensure that you are dispensing safely  
11:05:57 13 for the patients.

11:05:58 14 **Q** And so the policy for Walgreens has been it's okay to  
11:06:01 15 do that, there are times where it's the right thing to do?

11:06:05 16 **A** I don't know if I ever put that exactly in those  
11:06:08 17 words, but we do know that there are times when a  
11:06:13 18 prescription for a trinity will be dispensed.

11:06:25 19 **Q** The latest good faith dispensing checklist that I've  
11:06:28 20 been able to find has already been introduced as Plaintiffs'  
11:06:35 21 15068, I believe. I'll show you one of the pages and ask  
11:06:42 22 you, does this look like the latest targeted drug good faith  
11:06:46 23 dispensing checklist to you?

11:06:47 24 **A** I believe so.

11:06:47 25 **Q** The most prescribed controlled substance level II drug

11:07:02 1 in America, in fact the most prescribed drug in America for  
11:07:05 2 years, y'all still don't have it on your target drug good  
11:07:11 3 faith dispensing checklist, do you?

11:07:11 4 **A** No, but you see where we have other (optional-district  
11:07:16 5 specific) or it could be pharmacist specific?

11:07:19 6 **Q** Yeah.

11:07:19 7 **A** That could be used at any time.

11:07:20 8 **Q** Right. You still don't have it listed, the most  
11:07:27 9 overprescribed opiate out there, do you?

11:07:30 10 **A** I don't have it on the list, no.

11:07:32 11 **Q** Any reason you couldn't put it on your list?

11:07:37 12 **A** I haven't updated that list. I was focusing on the  
11:07:40 13 drugs that the DEA was focused on when I put that policy in  
11:07:42 14 place.

11:07:45 15 **Q** That wasn't my question, ma'am.

11:07:47 16 I said any reason you couldn't put it on your list?

11:07:50 17 **A** No, I could put it on the list if I wanted to put it  
11:07:53 18 on the list.

11:07:53 19 **Q** And if you put it on the list and stores actually  
11:07:55 20 followed the policies, they have to go through and answer  
11:07:59 21 all of those questions before they dispensed it, wouldn't  
11:08:02 22 they?

11:08:02 23 **A** They'd still have to go through and answer all of  
11:08:06 24 those questions when they're filling any controlled  
11:08:08 25 substance prescription, not just a target drug.

11:08:10 1 The target drug checklist is a tool that our  
11:08:13 2 pharmacists were able to -- well, it was a requirement for  
11:08:18 3 those three drugs, but it can be used with any prescription.

11:08:21 4 Q Oh, it -- ma'am, you just said "it was a requirement  
11:08:24 5 for those three drugs, but it can be used with any  
11:08:27 6 prescription." Right?

11:08:28 7 A Yes.

11:08:28 8 Q My question to you is, you could add it as a  
11:08:32 9 requirement to hydrocodone, couldn't you?

11:08:37 10 A I could add it.

11:08:38 11 Q And then it would be a target drug checklist as a tool  
11:08:45 12 that must be filled out with the most overprescribed opiate  
11:08:48 13 out there and attached either to the prescription or is the  
11:08:52 14 refusal to fill, right?

11:08:53 15 A Yes.

11:08:53 16 Q And there's no reason you haven't done that in almost  
11:09:00 17 10 years you've been in your jobs over this, has it?

11:09:03 18 A I have not done it.

11:09:05 19 Q That would be a good thing to do, wouldn't it?

11:09:07 20 A Something I could consider.

11:09:09 21 Q Then the last thing I've got for you, and we'll be  
11:09:16 22 finished with this part, is the checklist that we just  
11:09:25 23 looked at. I want to make sure the jury understands where  
11:09:30 24 those were.

11:09:33 25 When someone fills out that checklist, and we call



11:09:41 1 that the target drug good faith dispensing checklist, right?

11:09:49 2 **A** Yes.

11:09:50 3 **Q** It's got the little boxes. It asks questions like  
11:10:04 4 does the person have a valid Government Photo ID copied and  
11:10:07 5 attached to the prescription, right?

11:10:10 6 **A** Yes.

11:10:11 7 **Q** Was there a prior good faith dispensing refusal for  
11:10:16 8 this exact prescription in the patient comments, right?

11:10:19 9 **A** Yes.

11:10:20 10 **Q** That's assuming it hadn't been deleted, right? Right?

11:10:26 11 **A** Yes.

11:10:28 12 **Q** "Patient's received this prescription from Walgreens  
11:10:33 13 before." Correct?

11:10:34 14 **A** Yes.

11:10:35 15 **Q** "This prescription is from the same prescriber for the  
11:10:38 16 same medication as the previous fill," right?

11:10:41 17 **A** Yes.

11:10:41 18 **Q** "Third-party insurance is billed (if cash or a cash  
11:10:48 19 discount card, use caution)." Right?

11:10:53 20 **A** Yes.

11:10:53 21 **Q** "Patient does not appear intoxicated or under the  
11:10:56 22 influence of illicit drugs."

11:10:58 23 Do you see that?

11:10:58 24 **A** Yes.

11:10:58 25 **Q** "If available in your state, PDMP has been reviewed."

11:11:09 1 Right?

11:11:09 2 **A** Yes.

11:11:09 3 **Q** And by the way, do you know that PDMP, in Ohio the  
11:11:15 4 OARRS, could have been checked by your pharmacists had they  
11:11:18 5 chosen to back as early as 2009?

11:11:20 6 **A** Yes, you told me that yesterday.

11:11:21 7 **Q** Okay. "Prescription is being filled on time.

11:11:30 8 "You've got geographic proximity."

11:11:33 9 You see that?

11:11:34 10 **A** Yes.

11:11:34 11 **Q** If it's a chronic prescription, one that's over 90  
11:11:38 12 days, the use can be explained and is supported by  
11:11:41 13 documentation, right?

11:11:41 14 **A** Yes.

11:11:41 15 **Q** "Per CDC recommendation, you offer Narcan. If the  
11:11:49 16 prescription's more than 50 milligrams equivalent in  
11:11:52 17 morphine, right?

11:11:54 18 **A** Yes.

11:11:54 19 **Q** Then you've got room for notes?

11:11:57 20 **A** Yes.

11:12:02 21 **Q** Now, that form is one that is very useful to have  
11:12:06 22 available, right?

11:12:07 23 **A** It's helpful for the pharmacist, yes.

11:12:09 24 **Q** Well, so let's say I'm in Walgreens Store Number 1,  
11:12:23 25 okay?

11:12:23 1 **A** Okay.

11:12:23 2 **Q** And I -- and let's go back to 2012. Oh, no, this  
11:12:31 3 program wasn't in place in 2012, was it?

11:12:34 4 **A** Right, I didn't come into the position until December,  
11:12:38 5 and so nationwide it went in 2013.

11:12:41 6 **Q** In 2000 when?

11:12:43 7 **A** 2013.

11:12:45 8 **Q** So in 2013, you've got your program in place. We're  
11:12:50 9 going to assume that people are actually filling out the  
11:12:52 10 forms, okay?

11:12:53 11 **A** Okay.

11:12:53 12 **Q** Best case scenario, everybody's doing their job  
11:12:58 13 filling out the forms, all right?

11:13:00 14 **A** Okay.

11:13:00 15 **Q** So you've got this good faith checklist. You staple  
11:13:06 16 it to the prescription. Right?

11:13:11 17 **A** Okay.

11:13:11 18 **Q** And those two together aren't scanned into a computer,  
11:13:17 19 are they?

11:13:18 20 **A** The hard copy prescription is, yes.

11:13:21 21 **Q** But the good faith dispensing checklist, those two  
11:13:25 22 together, are not scanned into the computer?

11:13:27 23 **A** Correct.

11:13:27 24 **Q** So instead what you've got is one of them old file  
11:13:34 25 cabinets back in the storage room, and they just get filed

11:13:39 1 in Store Number 1 back in the old file cabinet, right?

11:13:43 2 **A** Yes.

11:13:44 3 **Q** Now, that person goes into Walgreens Store Number 2.

11:13:54 4 There's no way for the pharmacist to know about the

11:14:02 5 checklist that's been filled out and filed in Store Number

11:14:07 6 1, is there?

11:14:07 7 **A** Oh, they can. They can call that store, and that

11:14:11 8 store can pull the hard copy of a prescription that's

11:14:13 9 already been filled.

11:14:14 10 **Q** So the pharmacist that's supposed to do these

11:14:20 11 prescriptions -- that's an old-time phone, sort of.

11:14:28 12 The pharmacist can call the pharmacist?

11:14:31 13 **A** Yes.

11:14:31 14 **Q** And say, hey, time out, would you go back and look in

11:14:34 15 your file cabinet and see if you can find this target good

11:14:40 16 faith dispensing checklist on this patient?

11:14:42 17 **A** They could if they needed to do that to do their due

11:14:46 18 diligence, yes.

11:14:46 19 **Q** And as a practical matter, do you know if these are

11:14:49 20 filed by patient name or prescription number?

11:14:55 21 **A** Prescription number.

11:14:56 22 **Q** So they can't even look up the patient name. They've

11:14:58 23 got to know the prescription number?

11:15:00 24 **A** No, they can look up the patient name. They've got it

11:15:02 25 right in front of them.

11:15:03 1 Q And then they get the prescription number off of that?

11:15:05 2 A They can and they can also see notes and annotations  
11:15:08 3 and other things about that patient.

11:15:09 4 Q That haven't been purged.

11:15:11 5 And then they can say, would you go find this and pull  
11:15:15 6 it and come back and talk to me, right?

11:15:19 7 A If they need it for -- but, you know, each  
11:15:22 8 prescription that they fill is taken on their own merit per  
11:15:28 9 our policy. So the prescription that they're filling today,  
11:15:30 10 they may not need previous information when they're making  
11:15:35 11 their -- when they're, you know, going through their due  
11:15:39 12 diligence to fill.

11:15:39 13 Q But they've got to check for doctor shopping, don't  
11:15:41 14 they?

11:15:41 15 A They do. That's on the PDMP.

11:15:45 16 Q And they've got to check for pharmacy shopping, don't  
11:15:49 17 they?

11:15:49 18 A And that is also tonight PDMP.

11:15:51 19 Q And that's assuming that they do the PDMP in 2013,  
11:15:59 20 which is optional in Ohio until 2011 and then only required  
11:16:06 21 with certain prescriptions, right?

11:16:10 22 A Our overarching good faith dispensing policy has  
11:16:13 23 checking the PDMP in there if the pharmacist needs to refer  
11:16:17 24 to it, they had access to it, they could go see it.

11:16:20 25 Q But again --

11:16:21 1 **A** Our target drug policy did ask them to document that  
11:16:27 2 they indeed did it.

11:16:28 3 **Q** And this is assuming, again, that this is one of the  
11:16:33 4 60 percent where the form was filled out and kept, right?

11:16:37 5 MS. SWIFT: Objection. Mischaracterizes.

11:16:38 6 **A** That does not mean that the pharmacist --

11:16:41 7 THE COURT: Overruled.

11:16:41 8 **A** -- did not do their due diligence.

11:16:43 9 **Q** That wasn't my question, ma'am.

11:16:44 10 I said for them to call and get the pharmacist to go  
11:16:47 11 look in the file cabinet to find it to read it to them over  
11:16:50 12 the telephone, that's assuming that it's one of the 60  
11:16:52 13 percent where there was compliance, right?

11:16:56 14 **A** Yes.

11:16:56 15 **Q** And that's why you recognized that it would have been  
11:17:03 16 a better system for years to have those entered into the  
11:17:06 17 computer, right?

11:17:11 18 **A** I wanted to have an electronic good faith dispensing  
11:17:16 19 in our computer system done within our work flow. I had  
11:17:20 20 asked for that. I wanted it to make it easier for the  
11:17:23 21 pharmacists. And I did indeed do that.

11:17:25 22 And, yes, I did not get it done right away. I got it  
11:17:29 23 completed in 2019. It was a very large enhancement in our  
11:17:33 24 computer system.

11:17:34 25 **Q** You got it completed at the end of 2019.

11:17:39 1 **A** Okay.

11:17:40 2 **Q** Right?

11:17:40 3 MR. LANIER: And, Your Honor, if we could pass  
11:17:45 4 out, please, Plaintiffs' Exhibit 20795.

11:18:02 5 **Q** Ma'am, do you have 20795 in front of you?

11:18:05 6 **A** I do.

11:18:06 7 **Q** This is an e-mail from you dealing with this subject,  
11:18:08 8 isn't it?

11:18:08 9 **A** Yes.

11:18:09 10 **Q** There is an e-mail from you that's dated right before  
11:18:12 11 Thanksgiving.

11:18:15 12 **A** Yes.

11:18:15 13 **Q** November 21, 2019?

11:18:18 14 **A** Correct.

11:18:19 15 **Q** And it talks about the electronic good faith  
11:18:24 16 dispensing pilot.

11:18:25 17 Do you see this?

11:18:26 18 **A** Yes.

11:18:26 19 **Q** This is talking about actually having the good faith  
11:18:31 20 dispensing checklist in the computer, isn't it?

11:18:34 21 **A** A form of it, yes.

11:18:38 22 **Q** You said, "Oh, yes, I will."

11:18:44 23 This was in reply to an e-mail. We should look at  
11:18:46 24 that first.

11:18:47 25 "Hi, Al/Tasha, can you keep us posted on how this

11:18:53 1 goes? Seems like this could be a big win, but assume the  
11:18:57 2 pilot will validate or not."

11:18:59 3 Do you see that?

11:18:59 4 **A** Yes.

11:18:59 5 **Q** Because y'all were initially doing this just as a  
11:19:02 6 pilot program at the end of 2019, correct?

11:19:04 7 **A** We always pilot new computer enhancements to make sure  
11:19:08 8 that it's working as intended. So, yeah, it was a pilot.

11:19:12 9 **Q** I'm not fussing it, ma'am, I'm just pointing it out so  
11:19:15 10 that this makes sense.

11:19:16 11 **A** Okay. Then that's correct.

11:19:17 12 **Q** Okay. Thank you.

11:19:18 13 You said, "Oh, yes, I will. This is going to be  
11:19:23 14 great. I'll have the ability to pull data on the back end,  
11:19:27 15 and there won't be Wyeth ability to bypass the checklist as  
11:19:34 16 there is today."

11:19:35 17 What did you mean by Wyeth ability?

11:19:38 18 **A** That had to have been an auto correct. I don't know  
11:19:43 19 what Wyeth ability is.

11:19:45 20 But the way our system has been designed is that if  
11:19:50 21 the drug is -- required a checklist, the pharmacy staff have  
11:19:57 22 to stop and enter in the information or it is calculated for  
11:20:04 23 them in the process of computer system while they're filling  
11:20:06 24 the prescription.

11:20:08 25 **Q** Okay. So the answer to my question is you don't know,



11:20:10 1 right?

11:20:10 2 **A** I don't know what Wyeth is, no.

11:20:13 3 **Q** Thank you.

11:20:13 4 "There won't be" -- whatever Wyeth is or is not with  
11:20:18 5 auto correct -- "ability to bypass the checklist as there is  
11:20:23 6 today."

11:20:24 7 Do you see that?

11:20:25 8 **A** I do.

11:20:25 9 **Q** Because as of this date, there is an ability to bypass  
11:20:32 10 the checklist in the computer, correct?

11:20:34 11 **A** Because there was no checklist in the computer, it was  
11:20:38 12 a hard copy piece of paper that may or may not have been  
11:20:41 13 done, as you proved in the audit and we saw.

11:20:43 14 **Q** Is that a "yes" answer?

11:20:45 15 **A** Yes.

11:20:45 16 **Q** All right. So the question was, as of this date,  
11:20:50 17 there is an ability to bypass the checklist. Answer is yes?

11:20:53 18 **A** Yes.

11:20:54 19 **Q** Then you say, "I have been wanting to do this from day  
11:20:59 20 one, and Kermit wouldn't let me."

11:21:02 21 What is Kermit's job?

11:21:04 22 **A** Kermit was the president when I first became in role.

11:21:11 23 **Q** The president of Walgreens?

11:21:12 24 **A** Yes.

11:21:13 25 **Q** The president of Walgreens is making decisions on

11:21:18 1 whether or not these checklists can be entered into the  
11:21:23 2 computer?

11:21:25 3 **A** Okay, that's not what that says, so --

11:21:27 4 **Q** That's my question.

11:21:28 5 **A** Okay. Is it okay if I clarify?

11:21:30 6 **Q** Yeah, but here, let me understand this first.

11:21:33 7 "Kermit wouldn't let me."

11:21:37 8 **A** Yeah.

11:21:37 9 **Q** What do you mean by he wouldn't let you?

11:21:40 10 **A** So each year we have to submit budget requests for  
11:21:48 11 projects we want to do. When I say "we," it's not just me.  
11:21:50 12 Walgreens is a huge organization. There's lots of business  
11:21:53 13 units. We all have to submit projects that we want to have  
11:21:58 14 done into all areas of the company, our computer system and  
11:22:03 15 what have you.

11:22:03 16 Kermit asked that we handle this operationally because  
11:22:12 17 we were in the process of building a new computer system,  
11:22:15 18 and he did not want it built twice, meaning we're not going  
11:22:20 19 to spend time and effort building in IntercomPlus when we  
11:22:24 20 know we have this new computer system that is going to be  
11:22:29 21 coming.

11:22:29 22 That new computer system has not come to fruition yet,  
11:22:32 23 and that is why I was able to get the electronic good faith  
11:22:36 24 dispensing checklist added in our existing computer system.

11:22:43 25 **Q** All right, ma'am, then I go back to my question.

11:22:45 1 Are you saying that the president of Walgreens is  
11:22:48 2 making a decision on this issue?

11:22:51 3 **A** Yes, he did.

11:22:52 4 **Q** And you wanted from day one, I assume you mean back to  
11:22:57 5 2012 when you took over the job to build from the ground up,  
11:23:02 6 develop, change, and improve the policies and procedures?

11:23:05 7 **A** Yes.

11:23:05 8 **Q** So for seven years you've wanted to do this, and they  
11:23:13 9 wouldn't do it, right?

11:23:15 10 **A** We didn't -- that is correct, because we were in the  
11:23:19 11 process of changing computer systems and --

11:23:22 12 **Q** Over -- I'm sorry.

11:23:23 13 **A** Sorry.

11:23:23 14 **Q** No, that's my fault.

11:23:26 15 **A** And so they asked us to handle this operationally,  
11:23:30 16 which we did with the paper checklist.

11:23:32 17 **Q** So for seven years they're in the process of changing  
11:23:38 18 the computer system?

11:23:39 19 **A** Yes.

11:23:39 20 **Q** And they don't have an ability -- you're scanning in  
11:23:47 21 prescriptions already, aren't you?

11:23:48 22 **A** We are scanning in prescriptions.

11:23:51 23 **Q** And you're telling us the computer system wouldn't let  
11:23:54 24 you scan in the good faith dispensing checklist as well as  
11:23:58 25 the prescription?

11:24:00 1 **A** Oh, I understand what you're asking.

11:24:02 2 We did not scan it in as part of the policy. We just  
11:24:07 3 scanned in the prescriptions that were legally required, and  
11:24:14 4 the checklists were attached to those hard copies at store  
11:24:16 5 level.

11:24:17 6 **Q** And so you've been wanting to do this from day one,  
11:24:21 7 but for seven years you haven't been able to. The president  
11:24:25 8 weighs in. And you say, "this is a huge win for my team and  
11:24:31 9 the field." True?

11:24:32 10 **A** Yeah, true.

11:24:33 11 **Q** And then you say, "The next phase of this enhancement  
11:24:39 12 (as long as it doesn't get reprioritized)," do you see that?

11:24:45 13 **A** I do.

11:24:46 14 **Q** Would you agree with me that if the company had viewed  
11:24:52 15 this as a priority item, they could have done it sooner than  
11:25:00 16 seven years?

11:25:00 17 **A** But when you say priority item, you have to consider  
11:25:02 18 all the other things of decisions that they're getting made.  
11:25:05 19 When I already have a policy in place and I already have a  
11:25:09 20 process, they were weighing the fact that that was already  
11:25:13 21 being handled operationally, and we were going to get rid of  
11:25:18 22 our existing computer system for a new computer system. We  
11:25:22 23 have the plan to put what we got finally in IntercomPlus in  
11:25:28 24 the new computer system when it launches.

11:25:30 25 **Q** But, ma'am, look at what you're saying here. This

11:25:37 1 will "give us the ability to require a checklist for high  
11:25:44 2 morphine milligram equivalent prescriptions for chronic  
11:25:48 3 patients, like Percocet, Vicodin."

11:25:54 4 **A** Correct.

11:25:54 5 **Q** And we will be able to configure the quantity and drug  
11:25:58 6 instead of only the drug as it is today. That way we can  
11:26:00 7 reduce steps for acute fills and focus more time on chronic  
11:26:04 8 fills."

11:26:05 9 This is good for safety, isn't it?

11:26:10 10 **A** Sure.

11:26:11 11 **Q** And this thing that's good for safety, if it had been  
11:26:17 12 given to you, the ability to do it seven years earlier,  
11:26:21 13 would have been good for safety seven years earlier, right?

11:26:24 14 **A** We have lots of things in place for safety. But, yes,  
11:26:28 15 it would be an added safety.

11:26:30 16 **Q** In other words, the answer to my question is "yes,"  
11:26:35 17 right?

11:26:35 18 **A** Yes. We have lots of things for safety in our  
11:26:37 19 computer system. And, yes, it would have been an additional  
11:26:41 20 safety measure.

11:26:43 21 **Q** Yeah. And I'm not fussing that you have lots of good  
11:26:46 22 things in your computer system for safety. You've probably  
11:26:51 23 got things for convenience. You can probably tell us  
11:26:53 24 everything -- tissue we've ever bought there if we use our  
11:26:57 25 card or something. I'm not fussing that. I'm just asking a

11:27:00 1 very simple question.

11:27:00 2 This thing that's good for safety, if it had been  
11:27:05 3 given to you, the ability to do it seven years earlier,  
11:27:09 4 would have been good for safety seven years earlier, right?

11:27:15 5 **A** Yes.

11:27:15 6 **Q** Answer is yes, right?

11:27:16 7 **A** Yes.

11:27:16 8 **Q** Now, the second page talks about why this is  
11:27:29 9 important, and I'd like you to look at those bullet points.

11:27:32 10 **A** Sorry, can you help me with this document? I don't  
11:27:36 11 know what this is.

11:27:36 12 **Q** Sorry. This is that Plaintiffs' 20795, the one that  
11:27:39 13 we're talking about.

11:27:40 14 **A** Okay. Thanks.

11:27:41 15 **Q** You got it? All right.

11:27:43 16 Second page talks about why this is important.

11:27:49 17 Do you see that section?

11:27:51 18 **A** Yes.

11:27:51 19 **Q** And it gives us a couple of bullet points, four of  
11:27:54 20 them.

11:27:55 21 It "provides enhanced ability for pharmacists to  
11:28:02 22 document their good faith dispensing review."

11:28:04 23 That's a good thing, isn't it?

11:28:06 24 **A** Yes.

11:28:06 25 **Q** That helps make sure that the records are right,

11:28:10 1 correct?

11:28:10 2 **A** It helps make sure that there's documentation on the  
11:28:15 3 prescription.

11:28:16 4 **Q** In other words, that the records are right, correct.  
11:28:21 5 Documentation, I'm --

11:28:23 6 **A** Thank you.

11:28:23 7 **Q** I'm not arguing terms. I'm just trying to make sure  
11:28:26 8 we've got a clear record.

11:28:27 9 **A** I understand, but there's a difference between records  
11:28:29 10 and documentation.

11:28:29 11 **Q** Okay. Thank you for fixing that. This makes a record  
11:28:33 12 and we want it to be right.

11:28:34 13 So there's -- you're trying to make sure that the  
11:28:39 14 documentation is correct, right?

11:28:41 15 **A** Yes.

11:28:41 16 **Q** That's important for patient safety, correct?

11:28:44 17 **A** Yes.

11:28:45 18 **Q** It's important for record keeping, isn't it?

11:28:48 19 **A** Yes.

11:28:50 20 **Q** It's what your stores were failing at in the audit, or  
11:28:53 21 a number of them, right?

11:28:54 22 **A** Some of the stores, yes.

11:28:58 23 **Q** It makes a difference in patient safety at times,  
11:29:01 24 doesn't it?

11:29:06 25 **A** I wouldn't agree that it makes at times --

11:29:10 1 Q Let me ask it this way.

11:29:12 2 A Okay.

11:29:12 3 Q This can make a difference in patient safety, can't  
11:29:15 4 it?

11:29:15 5 A Yes.

11:29:16 6 Q Thank you.

11:29:17 7 Through good faith dispensing evaluation, second  
11:29:22 8 bullet point, and detailed -- "Thorough GFD evaluation and  
11:29:29 9 detailed documentation ensures patient safety."

11:29:32 10 Do you see that?

11:29:33 11 A Yes.

11:29:33 12 Q So this is something that you wanted to have in place  
11:29:38 13 seven years earlier to ensure patient safety, but it's  
11:29:42 14 finally going to get done seven years later, right?

11:29:46 15 A In an electronic format. It was already being done  
11:29:50 16 when the pharmacists were processing the prescriptions and  
11:29:52 17 doing their due diligence when filling prescriptions.

11:29:56 18 Q No, ma'am. This is talking about why this, this  
11:29:58 19 electronic system, is important.

11:30:00 20 Do you see that?

11:30:01 21 A Yes.

11:30:02 22 Q So the electronic system is important because the  
11:30:04 23 thorough evaluation and detailed documentation will ensure  
11:30:08 24 patient safety.

11:30:09 25 Do you see that?



11:30:10 1 **A** I see it.

11:30:10 2 **Q** That's a new change that was not present for the seven  
11:30:16 3 years you tried to get this system, right?

11:30:20 4 **A** This electronic good faith dispensing within our  
11:30:23 5 system was new, but ensuring that we have proper  
11:30:27 6 documentation and that we're taking care of patient safety  
11:30:30 7 has always been there.

11:30:31 8 **Q** No, ma'am, that -- we've looked at the audit.

11:30:35 9 **A** Again, that doesn't mean that the pharmacist was not  
11:30:39 10 doing their due diligence.

11:30:40 11 **Q** But it doesn't mean they were, doesn't it?

11:30:43 12 **A** Correct.

11:30:43 13 **Q** I mean, so it's like pin the tail on the donkey, while  
11:30:47 14 your eyes are closed, yeah, you might hit it but you might  
11:30:50 15 not, there's no way to tell unless you open your eyes, is  
11:30:56 16 there?

11:30:56 17 **A** What was the question?

11:30:57 18 **Q** Y'all play pin the tail on the donkey up here?

11:31:00 19 **A** What's that?

11:31:01 20 **Q** Okay. That's a Texas game maybe.

11:31:03 21 Ma'am, all I'm driving at is, you can't make an  
11:31:08 22 assumption if you don't have documentation, right?

11:31:10 23 **A** You can't make an assumption when you don't have  
11:31:13 24 documentation that the pharmacist is not doing their due  
11:31:16 25 diligence either.

11:31:16 1 Q Well, you can make an assumption they're not doing  
11:31:18 2 their job, they're not complying with policy, can't you?

11:31:28 3 MS. SWIFT: Objection.

11:31:28 4 THE COURT: If that's the question, you can  
11:31:29 5 answer the question.

11:31:31 6 A The audit showed that there were some locations that  
11:31:33 7 were not following policy a hundred percent.

11:31:36 8 Q All right. I'm almost through here.

11:31:39 9 But "Thorough GFD evaluation and detailed  
11:31:42 10 documentation ensures patient safety and protects Walgreens  
11:31:45 11 and our pharmacists."

11:31:47 12 You see that?

11:31:47 13 A Yes.

11:31:51 14 Q "This new process will allow for good faith dispensing  
11:31:55 15 chain-wide reporting and monitoring at the corporate support  
11:31:59 16 center and more efficient reporting to federal and state  
11:32:04 17 entities, including the DEA."

11:32:07 18 Do you see that as well?

11:32:08 19 A I do.

11:32:08 20 Q All very good things, right?

11:32:12 21 A Yes.

11:32:13 22 Q All things that would have been good seven years  
11:32:16 23 earlier, wouldn't they?

11:32:17 24 A Easier seven years -- seven years earlier, but not --  
11:32:25 25 I mean, we were already doing that.

11:32:27 1 Q Okay. So this isn't important because you're already  
11:32:29 2 doing this stuff?

11:32:29 3 A We're doing it on paper. The reason why we're doing  
11:32:32 4 it for electronic is so that we could have a centralized  
11:32:38 5 reporting so when the DEA called and said they wanted --  
11:32:40 6 they know about our checklist, and they asked for our  
11:32:43 7 checklist, instead of us having to call the store and asking  
11:32:48 8 for the checklist to be, you know, scanned up, we were able  
11:32:50 9 to pull that data electronically in our computer system  
11:32:55 10 today.

11:32:55 11 Q All right. So how were y'all monitoring at the  
11:32:59 12 corporate support center this chain-wide reporting?

11:33:03 13 A Through store walks, following up with different  
11:33:06 14 audits, through the BCI, through our field leadership,  
11:33:10 15 through train the trainer.

11:33:14 16 Q So the process for monitoring is what you described to  
11:33:17 17 us before. Y'all would audit and find out it's not being  
11:33:20 18 done a lot of time, y'all would have store walks and we'd  
11:33:25 19 get the evidence of that that we've looked at for Trumbull  
11:33:30 20 County.

11:33:30 21 And you don't think that the new process would be much  
11:33:33 22 better?

11:33:33 23 A Of course. That's why I wanted to do it.

11:33:35 24 Q Okay. So to say "we were already doing that," you  
11:33:39 25 weren't doing it as well as you'll be able to do it now,

11:33:43 1 fair?

11:33:43 2 **A** Correct.

11:33:43 3 **Q** "There will now be increased transparency for our  
11:33:49 4 pharmacy team members into a full patient profile that  
11:33:53 5 includes all good faith dispensing documentation."

11:33:57 6 Do you see that?

11:33:58 7 **A** I do.

11:33:58 8 **Q** And that's also a good thing, isn't it?

11:34:02 9 **A** Sure.

11:34:02 10 **Q** Okay.

11:34:03 11 MR. LANIER: Your Honor, I'll pass the  
11:34:04 12 witness.

11:34:05 13 Thank you, ma'am.

11:34:09 14 MS. SWIFT: Your Honor, may we have just a few  
11:34:11 15 minutes to get set up?

11:34:12 16 THE COURT: Sure.

11:34:13 17 MS. SWIFT: Thank you.

11:34:22 18 THE WITNESS: Your Honor, may I go to the  
11:34:24 19 restroom?

11:34:24 20 THE COURT: Oh, yes.

11:35:25 21 (Pause in proceedings.)

11:39:19 22 THE COURT: Okay. We'll now have examination  
11:39:21 23 by Ms. Swift for Walgreens.

11:39:28 24 MS. SWIFT: Thank you, Your Honor.

11:39:29 25 May I proceed?

**Polster (Direct by Swift)**

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11:39:30 1 THE COURT: Yes.

11:39:32 2 MS. SWIFT: Good morning, ladies and gentlemen  
11:39:34 3 of the jury. Kate Swift again for the Walgreens.

11:39:37 4 NATASHA POLSTER

11:39:37 5 - - - - -

11:39:37 6 DIRECT EXAMINATION

11:39:38 7 BY MS. SWIFT:

11:39:38 8 **Q** Good morning, Ms. Polster.

11:39:39 9 **A** Good morning.

11:39:40 10 **Q** It's been a while.

11:39:41 11 **A** Yes.

11:39:42 12 **Q** Based on your experience over the past 30 years, has  
11:39:44 13 there ever been a time when Walgreens pharmacists weren't  
11:39:49 14 concerned about preventing the diversion of controlled  
11:39:53 15 substances?

11:39:53 16 **A** Not to my knowledge, no.

11:39:54 17 **Q** And does that concern include concern about the  
11:39:58 18 diversion of opioids?

11:40:00 19 MR. WEINBERGER: Objection, Your Honor.

11:40:01 20 **A** Yes.

11:40:04 21 THE COURT: Overruled.

11:40:04 22 **Q** You were asked questions by the plaintiffs' lawyer  
11:40:11 23 about when you believed the opioid crisis began.

11:40:13 24 Do you recall those questions?

11:40:14 25 **A** I do.

11:40:15 1 Q I believe you said you thought it was around 2011, and  
11:40:20 2 you may have noticed that the plaintiffs' lawyer latched  
11:40:23 3 onto that?

11:40:23 4 MR. WEINBERGER: Objection, Your Honor.

11:40:24 5 THE COURT: Well, yeah, sustained as to the  
11:40:28 6 comment about what the plaintiffs' lawyer latched onto.  
11:40:32 7 Just please stick to the question.

11:40:33 8 MR. WEINBERGER: Your Honor, this should be on  
11:40:34 9 direct examination.

11:40:37 10 THE COURT: Well, Ms. Swift can certainly  
11:40:42 11 refer to a question that the witness was asked. That's  
11:40:44 12 proper on direct or cross. It was the sort of editorial  
11:40:48 13 comment that I sustained the objection to, not the direction  
11:40:51 14 to a question.

11:40:55 15 BY MS. SWIFT:

11:40:55 16 Q Ms. Polster, did you intend to say by your testimony  
11:40:57 17 that there were no problems with prescription opioid abuse  
11:41:00 18 before 2011?

11:41:01 19 A No, I did not.

11:41:01 20 Q Now, I'd like to take a step back and ask you a few  
11:41:07 21 preliminary questions about Walgreens' policies and  
11:41:10 22 procedures.

11:41:10 23 Has Walgreens had policies and procedures in place  
11:41:16 24 around the good faith dispensing of opioids for as long as  
11:41:19 25 you've been a pharmacist?

11:41:20 1 MR. WEINBERGER: Objection.

11:41:21 2 THE COURT: Well, yeah, now we're getting too  
11:41:26 3 leading, Ms. Swift.

11:41:32 4 Q Does Walgreens have procedures in place around the  
11:41:35 5 good faith dispensing of opioids?

11:41:36 6 A Yes.

11:41:36 7 Q Do those procedures include red flags that the  
11:41:43 8 pharmacists are supposed to look out for?

11:41:44 9 MR. WEINBERGER: Objection.

11:41:45 10 THE COURT: Overruled.

11:41:46 11 A Yes.

11:41:47 12 Q How long has Walgreens had policies like that in  
11:41:49 13 place?

11:41:51 14 A Ever since I've been a pharmacist, I remember those  
11:41:53 15 policies being in place.

11:41:54 16 Q When did you become a pharmacist?

11:41:55 17 A I graduated in 1989.

11:42:00 18 Q All right. I'd like to give you a little bit of a  
11:42:21 19 road map where I'm going to go for both your sake and the  
11:42:24 20 jury's sake. I'm going to ask you questions about your  
11:42:27 21 background and education, I'm going to ask you questions  
11:42:30 22 about Walgreens' policies and procedures, I'll ask you  
11:42:35 23 questions about support and tools for pharmacists, and then  
11:42:39 24 I will ask you some questions to follow up on what the  
11:42:42 25 plaintiffs' lawyer did about how Walgreens monitors

11:42:46 1 pharmacists. Okay?

11:42:47 2 **A** Yes.

11:42:47 3 **Q** I want to start with your background.

11:42:53 4 Ms. Polster, where are you from originally?

11:42:55 5 **A** Colorado.

11:42:56 6 **Q** Where is your family from originally?

11:42:58 7 **A** My father's Lebanese, and my mother is from America.

11:43:04 8 And we grew up for the most part in Colorado.

11:43:07 9 **Q** When we were speaking the other night, you told me a  
11:43:09 10 story about why you became a pharmacist, and it involved  
11:43:14 11 your uncle in Lebanon.

11:43:15 12 Would you please explain that to the jury?

11:43:17 13 **A** Sure. I knew that when I wanted to go to college, I  
11:43:23 14 wanted to do something in the medical field. And my uncle  
11:43:25 15 in Lebanon is a doctor. My father grew up in a very small  
11:43:31 16 town in northern Lebanon. And anyway, my uncle's a doctor,  
11:43:37 17 and literally gets paid with goats. The town is so small.

11:43:43 18 When I was -- we'd spend the summers over there  
11:43:47 19 sometimes, and when he knew I wanted to be a doctor, there  
11:43:50 20 was an accident in town where a young boy fell and cut his  
11:43:55 21 groin and was bleeding pretty badly. And so my uncle sent  
11:44:00 22 for me to come down and watch as he treated this young boy.

11:44:07 23 And I have to set it up so that you understand why I  
11:44:10 24 chose the difference between being a doctor and choosing my  
11:44:13 25 path to be a pharmacist. We didn't have good air



11:44:17 1 conditioning, there weren't the clinics like the hospitals  
11:44:19 2 we have today. And I walked down in that clinic, and it was  
11:44:23 3 hot and there was blood everywhere and I was like, oh, man,  
11:44:27 4 I can't -- I can't do it.

11:44:29 5 So I knew then and there I didn't want to be a doctor.

11:44:32 6 **Q** Let me stop you right there, Ms. Polster.

11:44:33 7 How old were you at this point in time?

11:44:35 8 **A** 15.

11:44:35 9 **Q** Okay. I didn't mean to interrupt.

11:44:37 10 **A** And then shortly thereafter, when I turned 16 I began  
11:44:42 11 working at Walgreens. And one of the pharmacists asked me  
11:44:46 12 what I wanted to do. I told him that story. He said, do  
11:44:49 13 you like math and science? And I said yes. And he said,  
11:44:53 14 you should consider pharmacy.

11:44:54 15 And so I did, and I made my decision when I was a  
11:44:58 16 junior in high school to go to pharmacy school.

11:45:00 17 **Q** You've worked -- have you worked at Walgreens since  
11:45:03 18 1982? Is that what I recall you saying yesterday?

11:45:06 19 **A** I have.

11:45:06 20 **Q** Did you work at Walgreens consistently throughout that  
11:45:09 21 whole entire time since then?

11:45:10 22 **A** I did.

11:45:10 23 **Q** Did you work at Walgreens while you were in pharmacy  
11:45:14 24 school in Colorado?

11:45:15 25 **A** I did.

11:45:15 1 Q What did you do, I think you said that you started out  
11:45:20 2 as a cashier. When did you start working in the pharmacy  
11:45:23 3 part of the store?

11:45:23 4 A Probably when I was a senior in high school, I would  
11:45:28 5 work back there when, you know, a technician was on  
11:45:32 6 vacation, and then when I -- my first year in college I was  
11:45:35 7 back in the pharmacy full-time.

11:45:36 8 Q When you were first working back in the pharmacy, what  
11:45:39 9 kind of things did you do?

11:45:40 10 A Technician duties, typing prescriptions, you know,  
11:45:45 11 helping at the cash register, things like that.

11:45:48 12 Q Did you fill prescriptions?

11:45:50 13 A No.

11:45:50 14 Q Then at some point while you were still in pharmacy  
11:45:56 15 school, did you move -- well, let me take a step back.

11:45:59 16 Where did you go to pharmacy school?

11:46:01 17 A University of Colorado.

11:46:02 18 Q And where is that?

11:46:03 19 A It's in Boulder.

11:46:04 20 Q Did you live in Boulder the entire time you were in  
11:46:06 21 pharmacy school?

11:46:06 22 A Not the whole time, but for those three years where it  
11:46:13 23 was required where I was on campus. And then when you move  
11:46:17 24 to the externship programs, I was in Colorado Springs.

11:46:22 25 Q Why did you move to Colorado Springs?

11:46:23 1 **A** My husband was transferred.

11:46:25 2 **Q** What did you husband do at a time for a living?

11:46:29 3 **A** He was a store manager at that time.

11:46:31 4 **Q** Where did he work?

11:46:31 5 **A** He worked for Walgreens in Colorado Springs.

11:46:35 6 **Q** You said he was a store manager. Is your husband a  
11:46:39 7 pharmacist?

11:46:39 8 **A** He is not.

11:46:39 9 **Q** Does anyone else in your family work at Walgreens or  
11:46:43 10 did they ever?

11:46:43 11 **A** My mother-in-law worked for Walgreens. She was a  
11:46:46 12 bookkeeper and a cosmetician. And my daughter, who is a  
11:46:51 13 finance major, did an internship at Walgreens one summer  
11:46:57 14 when she was in college.

11:46:58 15 **Q** What is a cosmetician?

11:47:01 16 **A** It's somebody that helps run the cosmetic department,  
11:47:04 17 can help customers with cosmetics or shampoos or hair color.

11:47:10 18 **Q** All right. I think you've said a couple of times you  
11:47:14 19 graduated from pharmacy school in 1989.

11:47:17 20 Did you become a staff pharmacist at Walgreens at that  
11:47:20 21 time?

11:47:20 22 **A** I was a float pharmacist first.

11:47:23 23 **Q** What's a float pharmacist?

11:47:24 24 **A** It's a pharmacist that doesn't have one full-time  
11:47:27 25 store. They go from store to store to cover vacations and

11:47:32 1 sick days and things like that.

11:47:34 2 **Q** Okay. We might come back to that later on.

11:47:36 3 So you started as a float pharmacist. At some point  
11:47:39 4 did you become a full-time pharmacist at a Walgreens store?

11:47:42 5 **A** I did.

11:47:43 6 **Q** When was that?

11:47:45 7 **A** Probably sometime in 1990 I got a full-time position  
11:47:53 8 at a store in Colorado Springs.

11:47:55 9 **Q** At some point after that, were you promoted to  
11:47:59 10 pharmacy manager?

11:48:00 11 **A** Yeah, after -- my husband was transferred again to  
11:48:04 12 St. Louis, and I was a staff pharmacist for a while in  
11:48:08 13 St. Louis, and then I became a pharmacy manager in  
11:48:10 14 St. Louis.

11:48:10 15 **Q** All right. And at some point -- I don't want to mess  
11:48:13 16 up the timeline, but at some point were you promoted from  
11:48:16 17 pharmacy manager to pharmacy supervisor?

11:48:19 18 **A** Yeah, that was after we moved to Oklahoma City, I was  
11:48:25 19 promoted from Oklahoma City pharmacy manager to a pharmacy  
11:48:29 20 supervisor in Kansas City.

11:48:32 21 **Q** Okay. Let me break that down a little bit.

11:48:34 22 What is the difference between a pharmacy manager and  
11:48:37 23 a pharmacy supervisor?

11:48:38 24 **A** A pharmacy manager oversees one location, and a  
11:48:41 25 pharmacy supervisor oversees multiple locations.

11:48:45 1 Q Do you have to be a pharmacist to be a pharmacy  
11:48:48 2 manager?

11:48:48 3 A Yes.

11:48:48 4 Q Do you have to be a pharmacist to be a pharmacy  
11:48:50 5 supervisor?

11:48:51 6 A Yes.

11:48:52 7 Q Okay. All right. So you testified that you and your  
11:48:59 8 husband moved from Colorado to St. Louis, and I believe you  
11:49:01 9 said you then moved to Oklahoma City. Is that right?

11:49:05 10 A Correct.

11:49:05 11 Q What did your husband do when you moved to Oklahoma  
11:49:07 12 City?

11:49:07 13 A We were -- I was an emerging leader pharmacy  
11:49:13 14 manager --

11:49:13 15 Q I'm sorry.

11:49:15 16 A Sorry.

11:49:15 17 Q For the court reporter's sake, I'm just going to ask  
11:49:18 18 you to slow down a little bit. I didn't quit catch what you  
11:49:20 19 said. I apologize.

11:49:22 20 A I was an emerging leader pharmacy manager.

11:49:24 21 Q What is that?

11:49:26 22 A In addition to the responsibilities of running a  
11:49:28 23 pharmacy, I also had responsibility for hiring and training  
11:49:33 24 new pharmacists for the market, and my husband was an  
11:49:37 25 emerging leader store manager who oversaw a store, and then

11:49:41 1 he also did hiring and training for the market.

11:49:43 2 **Q** Before you and your husband moved to Oklahoma City,  
11:49:48 3 were there Walgreens stores in Oklahoma City?

11:49:49 4 **A** No.

11:49:50 5 **Q** Did you and your husband open Walgreens stores in  
11:49:53 6 Oklahoma City?

11:49:53 7 **A** Yes. We assisted in opening and staffing the new  
11:49:57 8 stores.

11:49:57 9 **Q** How long were you in Oklahoma City?

11:49:59 10 **A** For 18 months.

11:50:00 11 **Q** And then where did you move next?

11:50:02 12 **A** Kansas City.

11:50:03 13 **Q** What did you and your husband do in Kansas City?

11:50:05 14 **A** My husband was the emerging leader store manager of  
11:50:10 15 Kansas City opening the new market, and I was the pharmacy  
11:50:13 16 supervisor overseeing the pharmacies of that market as we  
11:50:18 17 grew the market with -- in the stores.

11:50:21 18 **Q** Before you and your husband moved to Kansas City, were  
11:50:25 19 there Walgreens stores in Kansas City?

11:50:26 20 **A** No.

11:50:27 21 **Q** Did you -- if I'm understanding your testimony, did  
11:50:31 22 you and your husband open stores in Kansas City?

11:50:32 23 **A** We did.

11:50:33 24 **Q** About what does it entail to open a new market like  
11:50:38 25 that? Does that involve hiring people?

11:50:40 1 **A** Yes.

11:50:40 2 **Q** Does it involve training people?

11:50:42 3 **A** Yes.

11:50:42 4 **Q** How many stores did you and your husband open in  
11:50:45 5 Kansas City?

11:50:45 6 **A** For me as a pharmacy supervisor, I went from zero to  
11:50:53 7 30 stores in the three-year period of time that we were  
11:50:57 8 there.

11:50:58 9 **Q** Then -- you just said you were in Kansas City for  
11:51:06 10 three years.

11:51:07 11 Where did you go after that?

11:51:08 12 **A** Chicago.

11:51:08 13 **Q** What did you do when you got to Chicago?

11:51:10 14 **A** In Chicago I was a pharmacy supervisor before moving  
11:51:15 15 to the support office.

11:51:16 16 **Q** I've heard you use this term the "support office" or  
11:51:20 17 the "support center."

11:51:20 18 Can you explain what that means?

11:51:23 19 **A** Yeah. It is the central offices that the Walgreens  
11:51:28 20 corporation has that have business units that support our  
11:51:34 21 stores nationwide.

11:51:34 22 **Q** Give us just a very high level what you did in the  
11:51:42 23 2000 to 2012 time frame in Chicago before you took your role  
11:51:46 24 in pharmaceutical integrity, just briefly.

11:51:49 25 **A** Sure. So when I came up to the support center, I was

11:51:52 1 in charge of pharmacy operating systems. Those were systems  
11:51:55 2 that did not include the dispensing prescriptions system.  
11:52:02 3 It was the payroll system, the scheduling system. Sometimes  
11:52:09 4 I helped with policies. I was responsible for work flow,  
11:52:14 5 making sure that the pharmacy design made sense for the  
11:52:19 6 pharmacy staff.

11:52:20 7 **Q** Then in 2012 you've already testified you took on a  
11:52:24 8 new role as the head of pharmaceutical integrity.

11:52:29 9 Is that a fair characterization?

11:52:31 10 **A** Yes.

11:52:31 11 **Q** And I don't want to rehash it. I believe that you  
11:52:37 12 said your responsibilities included executing on --

11:52:37 13 (Court reporter interjection.)

11:52:47 14 **Q** I'm just trying to orient you to where I'm going.

11:52:50 15 You already testified to what your responsibilities  
11:52:51 16 were. Part of your responsibilities when you took over as  
11:52:56 17 the head of pharmaceutical integrity, did they include  
11:53:00 18 executing on compliance for both dispensing and distribution  
11:53:08 19 of controlled substances?

11:53:09 20 **A** Yes.

11:53:10 21 **Q** Prior to 2012, when you came into your role, were  
11:53:19 22 there other groups at Walgreens that handled that function  
11:53:22 23 or those functions I should say?

11:53:23 24 **A** Yes.

11:53:24 25 **Q** Before your group, pharmaceutical integrity, was put



11:53:31 1 in place, were there people in the distribution centers who  
11:53:37 2 were responsible for parts of that compliance function?

11:53:41 3 MR. WEINBERGER: Objection.

11:53:43 4 THE COURT: Overruled.

11:53:48 5 **A** Yes.

11:53:48 6 **Q** Before your group came into being in 2012, were there  
11:53:56 7 people in loss prevention who were responsible for parts of  
11:54:01 8 that compliance function?

11:54:02 9 **A** Yes.

11:54:03 10 **Q** What is loss prevention?

11:54:06 11 **A** Loss prevention is a business unit that has personnel  
11:54:13 12 at the support center as well as folks that live within the  
11:54:19 13 field, in the districts, that follow up with -- with the  
11:54:23 14 stores. They're another set of eyes and ears for, you know,  
11:54:29 15 checking to make sure that our controls storewide are in  
11:54:35 16 place, to prevent loss of money or drugs or, you know,  
11:54:41 17 merchandise, things like that.

11:54:44 18 **Q** Before you came into your role in 2012, were there  
11:54:48 19 people in pharmacy inventory who had certain  
11:54:52 20 responsibilities for the compliance functions we've been  
11:54:54 21 discussing?

11:54:55 22 **A** I don't know exactly what the inventory folks'  
11:55:03 23 responsibilities were, but we did have inventory people that  
11:55:06 24 did order and manage controlled substances and all inventory  
11:55:12 25 back in the pharmacy.

11:55:13 1 Q Before you came into your role in 2012, were there  
11:55:17 2 other people that I haven't asked you about who were  
11:55:21 3 responsible for pieces of the compliance functions that  
11:55:24 4 we've been talking about?

11:55:25 5 A Yes.

11:55:28 6 Q How do you know that?

11:55:29 7 A We had and still do a compliance department that  
11:55:40 8 will -- you know, that are -- you know, that are responsible  
11:55:43 9 for our code of conduct training, that investigate hotlines  
11:55:51 10 that would -- you know, that could be escalated from patient  
11:55:55 11 or from an employee. We have, you know, our legal  
11:56:00 12 department, we have our district leaders. You know,  
11:56:05 13 Walgreens is a really big organization, and we have a lot of  
11:56:09 14 people that are responsible for that kind of work.

11:56:13 15 Q Was one of the goals of your group when you were put  
11:56:17 16 in place in late 2012 to bring those functions together?

11:56:21 17 A Yes.

11:56:21 18 Q You testified before that overseeing pharmaceutical  
11:56:34 19 integrity is just a piece of your job; is that correct?

11:56:37 20 A Yes, a piece of my job today, correct.

11:56:40 21 Q What else are you responsible for?

11:56:41 22 A I'm responsible for the nationwide immunization  
11:56:46 23 program that includes all vaccines including COVID vaccine.  
11:56:52 24 I'm responsible for third-party operations, which includes  
11:56:55 25 the processing and billing of patients' insurance

11:57:02 1 prescriptions. The state PDMP and reporting into the state  
11:57:09 2 PDMP is part of my responsibilities, in addition to  
11:57:13 3 electronic prescribing, as well as the pharmacy automation,  
11:57:18 4 the machines that assist the pharmacy staff back in the  
11:57:23 5 pharmacy.

11:57:24 6 **Q** What is your job title today?

11:57:26 7 **A** Divisional vice president of pharmacy quality  
11:57:31 8 compliance and patient safety.

11:57:32 9 **Q** How many people work for you today?

11:57:40 10 **A** 83 maybe.

11:57:42 11 **Q** How many of those are particularly focused on  
11:57:46 12 pharmaceutical integrity, the compliance function we've been  
11:57:48 13 talking about?

11:57:49 14 **A** 12.

11:57:51 15 **Q** What are the backgrounds of people who work for you in  
11:57:59 16 pharmaceutical integrity?

11:58:00 17 **A** I have a couple pharmacists. I have a former law  
11:58:05 18 enforcement employee that then came to our loss prevention  
11:58:08 19 department which then transferred to my department. I have  
11:58:14 20 a couple folks that are really, really good at pulling data.  
11:58:19 21 And then I have some analysts and coordinators that have  
11:58:25 22 store experience that helped with, you know, pulling data,  
11:58:35 23 controlled substance inventories, that kind of stuff.

11:58:36 24 **Q** So when you refer to your group as a support center,  
11:58:40 25 are you talking about that group of pharmacists, former law

11:58:44 1 enforcement professionals, data analysts?

11:58:48 2 **A** Yes.

11:58:48 3 **Q** Who are -- who does the support center support?

11:58:52 4 **A** The -- well, the stores, but that particular business  
11:58:59 5 unit is the pharmacy.

11:59:02 6 **Q** Are you still licensed as a pharmacist today?

11:59:04 7 **A** I am.

11:59:04 8 **Q** Do you hold a license in more than one state?

11:59:06 9 **A** I do.

11:59:06 10 **Q** Which states are you licensed in?

11:59:08 11 **A** Colorado and Illinois.

11:59:09 12 **Q** Do you still fill prescriptions today?

11:59:13 13 **A** I don't.

11:59:13 14 **Q** Why do you maintain your pharmacy licenses in multiple  
11:59:16 15 states?

11:59:17 16 **A** You know, I worked really hard for that license. It's  
11:59:21 17 pretty hard to decide to give up. And I've just kept it up  
11:59:24 18 throughout the years.

11:59:27 19 **Q** Are pharmacists required to be licensed in all 50  
11:59:32 20 states?

11:59:33 21 **A** No.

11:59:33 22 **Q** Are they required to be licensed in most states?

11:59:37 23 **A** They're required to be licensed in the state in which  
11:59:40 24 they practice.

11:59:41 25 **Q** Oh, my question was not clear. I understand now I

11:59:44 1 couldn't said no.

11:59:45 2 If you want to be a pharmacist in any state in the  
11:59:48 3 United States, do you have to be licensed in that state to  
11:59:52 4 practice pharmacy?

11:59:52 5 **A** Yes.

11:59:52 6 **Q** Okay. Do you have to have a degree that's called a  
11:59:59 7 PharmD?

11:59:59 8 **A** You do now, yes.

12:00:00 9 **Q** What is a PharmD?

12:00:01 10 **A** It is a doctor of pharmacy, and it is the designation  
12:00:05 11 that you graduate with when you graduate from an accredited  
12:00:10 12 pharmacy school.

12:00:11 13 **Q** Do you have to sit for an example to become a licensed  
12:00:15 14 pharmacist?

12:00:15 15 **A** You do.

12:00:17 16 **Q** Do you have to take more than one exam?

12:00:19 17 **A** Yes.

12:00:19 18 **Q** Why do you have to take more than one exam to become a  
12:00:22 19 pharmacist?

12:00:22 20 **A** There's the national board exam, and then there's the  
12:00:26 21 state law exam.

12:00:29 22 **Q** Do you have to take the state law exam in every state  
12:00:32 23 where you want to practice pharmacy?

12:00:33 24 **A** Yes.

12:00:34 25 **Q** How many state law exams have you taken?

12:00:37 1 A Five.

12:00:38 2 Q And is that because you were moving from Colorado to  
12:00:41 3 Missouri to Oklahoma to -- I missed one.

12:00:45 4 A Kansas City.

12:00:47 5 Q Did you pass all of those state law exams?

12:00:49 6 A I did.

12:00:58 7 MS. SWIFT: Your Honor, I'm noticing the time.  
12:01:00 8 I'm about to switch topics.

12:01:01 9 THE COURT: I was about to inquire whether  
12:01:03 10 it's a good time to break.

12:01:05 11 Okay. Ladies and gentlemen, we'll take our lunch  
12:01:07 12 recess. The usual admonitions. We'll pick up at 1:00 with  
12:01:21 13 the balance of this witness's testimony.

12:01:40 14 (The jury is not present.)

12:01:42 15 MR. LANIER: Just one quick thing on the  
12:01:43 16 record. Motion in limine number 42 was to preclude any  
12:01:47 17 references to the COVID vaccine and administering it and  
12:01:50 18 things like that. It was granted by the Court. It's been  
12:01:54 19 violated. I'm sure it was just a mistake, but I do want to  
12:01:57 20 remind the other side the importance of warning witnesses  
12:02:01 21 about motions in limine that have been granted.

12:02:03 22 MS. SWIFT: Absolutely. My apologies.

12:02:05 23 It was inadvertent, Your Honor.

12:02:07 24 MR. LANIER: I don't think it was intentional.

12:02:08 25 THE COURT: Okay.

**Polster (Direct by Swift)**

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12:02:10

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MR. LANIER: Thank you, Judge.

12:02:10

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(A luncheon recess was taken at 12:02 p.m.)

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01:02:03 1 A F T E R N O O N S E S S I O N

01:02:43 2 - - - - -

01:03:18 3 (In open court at 1:03 p.m.)

01:03:18 4 THE COURT: Everyone can be cede.

01:03:20 5 Before we bring out the jury, CVS and Walgreens just  
01:03:24 6 filed an objection, I guess, to rulings on certain  
01:03:29 7 designations. This pertains to Ms. Ashley. She's an  
01:03:36 8 employee of the DEA; is that right?

01:03:40 9 MS. SWIFT: Former employee, Your Honor.

01:03:43 10 MR. WEINBERGER: Yes, she followed Rannazzisi  
01:03:47 11 in that position.

01:03:47 12 THE COURT: All right. I don't see any reason  
01:03:50 13 to show her -- well, this is designation, all right.

01:03:57 14 She doesn't need any press releases about anything. I  
01:04:03 15 look to this testimony -- we don't need her to read  
01:04:07 16 documents. The documents are in already. So I didn't see  
01:04:13 17 any relevance from these designations that CVS and Walgreens  
01:04:18 18 are now objecting to. It's already -- the documents are in.  
01:04:22 19 There's been testimony that the documents are with the  
01:04:26 20 corporation, and the documents say themselves they're with  
01:04:30 21 the corporation. And if CVS or Walgreens puts anyone on to  
01:04:34 22 say the opposite, that person is not going to leave the  
01:04:36 23 stand intact after Mr. Lanier or Mr. Weinberger  
01:04:40 24 cross-examine them.

01:04:42 25 MR. WEINBERGER: Can I address a response,



01:04:44 1 Your Honor, since I'm the one that did the deposition on the  
01:04:49 2 dispensing side?

01:04:50 3 So there was extensive testimony, you can't just look  
01:04:55 4 at it in isolation, Your Honor. There's extensive testimony  
01:04:58 5 that she gave when directed -- on direct examination by the  
01:05:05 6 defense lawyers.

01:05:06 7 THE COURT: Who? Who gave?

01:05:08 8 MR. WEINBERGER: That Ms. Ashley gave.

01:05:11 9 THE COURT: Yes.

01:05:11 10 MR. WEINBERGER: About whether -- that dealt  
01:05:13 11 with the issue of whether or not the DEA provided guidance  
01:05:18 12 on issues involving dispensing. You know, what were the --  
01:05:24 13 what did the dispenser's handbook say, what did the -- the  
01:05:33 14 pharmacist handbook, and various other directives including  
01:05:37 15 the provisions of the CSA.

01:05:38 16 The purpose of my putting in these documents as well  
01:05:40 17 as the press releases was not just to put them in to  
01:05:47 18 demonstrate that, for example, a Walgreens MOA applied to  
01:05:51 19 Walgreens or that a Walgreens MOA was issued in a press  
01:05:56 20 release by the DOJ that included a hyperlink to that MOA,  
01:06:01 21 but that, as she testified, cases published in the Federal  
01:06:10 22 Register, pronouncements by the DEA in the Federal Register,  
01:06:22 23 press releases issued by the DOJ on behalf of the DEA, about  
01:06:27 24 enforcement actions that were taken are notice not just to  
01:06:30 25 who it was that the agreements were the subject of but

01:06:35 1 everybody else in the industry about what the DEA and the  
01:06:41 2 Department of Justice expected with respect to their  
01:06:44 3 dispensing practices.

01:06:45 4 And so that was the purpose of that examination.

01:06:52 5 It wasn't -- of course, it was done long before we  
01:06:55 6 were in trial and long before we knew what was going to come  
01:06:59 7 into evidence and what not in terms of the agreements.

01:07:04 8 But again, it's an entirely different purpose, Your  
01:07:07 9 Honor. And I believe that I laid the foundation for that in  
01:07:11 10 my examination of Ms. Ashley about the importance of --

01:07:15 11 THE COURT: I don't have time to go through  
01:07:16 12 this line by line, all right? That's why we keep having  
01:07:19 13 this, we'll forget about these depositions, we'll bring in  
01:07:23 14 the people live and they can ask relevant questions.

01:07:27 15 MS. SWIFT: Your Honor, if I may respond very  
01:07:29 16 briefly, all of the points that Mr. Weinberger just made,  
01:07:31 17 that evidence is already in. You've already ruled that it  
01:07:33 18 doesn't need to come in again.

01:07:34 19 THE COURT: Well, I don't know if we've had  
01:07:36 20 specific testimony --

01:07:40 21 MS. SWIFT: I mean, the testimony in question  
01:07:43 22 with respect to Walgreens relates to the 2013 settlement  
01:07:46 23 agreement.

01:07:46 24 THE COURT: I'll allow the one question about  
01:07:51 25 whether something was published in the Federal Register or

01:07:54 1 something or what -- what could be accessed, but we don't  
01:07:58 2 need to admit press releases, they're inadmissible. And  
01:08:03 3 we've had plenty of references to the documents. We don't  
01:08:05 4 need the documents read in again and again.

01:08:07 5 MR. WEINBERGER: But, Your Honor, again in the  
01:08:08 6 context of that -- well, then everything else about her  
01:08:15 7 testimony, about whether she -- they did or didn't provide  
01:08:19 8 guidance to the industry and they -- you know, they did in  
01:08:23 9 some respects --

01:08:24 10 THE COURT: But assume she said they provided  
01:08:26 11 a lot of guidance to the industry.

01:08:28 12 MR. WEINBERGER: Right, but she was also  
01:08:30 13 examined about the things that they didn't say, that they  
01:08:34 14 didn't provide guidance on. And this is exactly -- that's  
01:08:36 15 exactly the point. When I'm examining her, I'm trying to  
01:08:41 16 rebut that testimony that there was a significant amount of  
01:08:46 17 guidance that was provided about dispensing practices, about  
01:08:50 18 red flags, based upon the decisions and the MOAs that were  
01:08:55 19 rendered.

01:08:56 20 THE COURT: Those aren't the --

01:09:00 21 MR. WEINBERGER: But you can't take those  
01:09:02 22 questions in isolation, Your Honor. It's the -- I mean, I  
01:09:06 23 think I should have an opportunity to have you consider --

01:09:10 24 THE COURT: Let's bring her in and you can ask  
01:09:12 25 her those questions in a relevant way, all right? I mean --

01:09:17 1 MS. SWIFT: Your Honor, she's a third party.  
01:09:19 2 She's outside the subpoena power.

01:09:20 3 THE COURT: Put her on video, all right? I  
01:09:23 4 mean, as I said, I'm about done with this, okay? It just  
01:09:26 5 isn't -- it isn't working.

01:09:28 6 MS. SWIFT: Your Honor, if we would have the  
01:09:29 7 opportunity to talk to the plaintiffs about this.  
01:09:31 8 Mr. Weinberger had the opportunity to ask the questions that  
01:09:33 9 he is now seeking to have admitted.

01:09:35 10 THE COURT: I said I'm about done, so if you  
01:09:39 11 all can't work this out, this witness will testify live by  
01:09:42 12 video, okay, and you can ask her the questions you want and  
01:09:44 13 I'll rule on them on the fly.

01:09:48 14 So I don't -- I can't carve it up because I don't know  
01:09:51 15 what she was asked before, and I don't know if this is --  
01:09:55 16 this may be responding to something. I don't know. But in  
01:09:59 17 isolation is what I've got.

01:10:01 18 So if you all can't work it out, scratch your depo,  
01:10:04 19 put her on live by video and you can ask her whatever  
01:10:07 20 questions you want, both sides. All right?

01:10:10 21 MR. WEINBERGER: That's fine, Your Honor.  
01:10:11 22 Thank you.

01:10:11 23 THE COURT: Okay. All right. Let's bring in  
01:10:16 24 the jury.

01:11:52 25 (The jury is present at 1:11 p.m.)

**Polster (Direct by Swift)**

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01:11:53 1 THE COURT: Okay. Please be seated.

01:11:55 2 And Ms. Polster, you're still under oath.

01:11:59 3 Ms. Swift, you may continue your examination.

01:12:03 4 MS. SWIFT: Thank you, Your Honor.

01:12:06 5 Welcome back, Ms. Polster.

01:12:07 6 Good afternoon, everyone.

01:12:07 7 BY MS. SWIFT:

01:12:09 8 **Q** Ms. Polster, I'd like to ask you some questions about

01:12:11 9 the training that Walgreens provides to its pharmacists,

01:12:15 10 okay?

01:12:15 11 **A** Okay.

01:12:15 12 **Q** You were asked questions earlier about pharmacist

01:12:18 13 training and the addition of periodic training on good faith

01:12:23 14 dispensing as part of -- that you added as part of an

01:12:25 15 agreement with the DEA.

01:12:26 16 Do you remember those questions?

01:12:27 17 **A** Yes.

01:12:29 18 **Q** Does Walgreens provide training on good faith

01:12:33 19 dispensing for every new pharmacist when they're first hired

01:12:35 20 at Walgreens?

01:12:36 21 **A** Yes.

01:12:36 22 **Q** How long has Walgreens been doing that?

01:12:38 23 **A** Ever since I have been a pharmacist, I remember it

01:12:44 24 happening.

01:12:44 25 **Q** How long does that training, that new hire training,

01:12:50 1 take to complete, for the pharmacist?

01:12:54 2 **A** So a new hire pharmacist that has never worked for  
01:12:57 3 Walgreens before has a minimum of two weeks of training that  
01:13:02 4 is on the job between doing computer modules and then going  
01:13:07 5 back into the pharmacy and practicing and going back and  
01:13:13 6 forth to get comfortable with the practices at Walgreens.

01:13:16 7 In addition, there are -- I refer to them as PPLs,  
01:13:22 8 which is our computer training software.

01:13:25 9 **Q** What does PPL stand for?

01:13:27 10 **A** I cannot remember. People learning something.

01:13:31 11 But we use that software to get the training down to  
01:13:39 12 all of our employees, not just pharmacies but all employees.

01:13:44 13 **Q** Are you talking now still specifically about new hire  
01:13:48 14 training?

01:13:48 15 **A** Yes. And depending on what the training is depends on  
01:13:58 16 the time that that training would have to be completed.

01:14:00 17 So in other words, within the first two weeks of  
01:14:03 18 training the good faith dispensing training would have to be  
01:14:06 19 completed. But there may be other training that happens or  
01:14:12 20 is required, but it wouldn't have to be done within that  
01:14:15 21 first two weeks. That pharmacist might have, you know, a  
01:14:17 22 month to do it or 60 days.

01:14:18 23 **Q** Do pharmacists always complete the training exactly  
01:14:22 24 when they're supposed to?

01:14:23 25 **A** No.

01:14:23 1 Q Do you and your team and others at Walgreens take  
01:14:26 2 steps to make sure, to the best of your ability, that they  
01:14:30 3 complete that training promptly?

01:14:31 4 A Yes.

01:14:32 5 Q And I think I heard you say it, but does the training  
01:14:38 6 that they pharmacist at Walgreens receives when they first  
01:14:41 7 are on the job, does it include training on good faith  
01:14:45 8 dispensing policies?

01:14:45 9 A It does.

01:14:52 10 Q In addition to the new hire training that we were just  
01:14:54 11 talking about, does Walgreens also provide training when new  
01:14:58 12 policies are rolled out?

01:15:00 13 A Yes.

01:15:01 14 Q Why do you do that?

01:15:02 15 A To make the pharmacy or whatever employee that it is  
01:15:09 16 relevant to aware of the changes that have been put in  
01:15:12 17 place.

01:15:13 18 Q Have you taken steps to roll out training when new  
01:15:18 19 versions of the good faith dispensing policy rolled out?

01:15:21 20 A Yes.

01:15:21 21 Q Have you taken steps to roll out training for  
01:15:27 22 pharmacists when new versions of the target drug good faith  
01:15:30 23 dispensing policy roll out?

01:15:31 24 A Yes.

01:15:31 25 Q Does Walgreens also provide training for pharmacists

01:15:43 1 on an ad hoc basis if that pharmacist's performance isn't up  
01:15:48 2 to par?

01:15:49 3 **A** Yes.

01:15:49 4 **Q** Are there other reasons that Walgreens might provide  
01:15:51 5 ad hoc training to pharmacists on the job?

01:15:55 6 **A** Yes.

01:15:55 7 **Q** Now, you testified earlier that today Walgreens also  
01:16:02 8 provides annual or periodic training on good faith  
01:16:09 9 dispensing. Is that correct?

01:16:09 10 **A** Yes.

01:16:09 11 **Q** Have you been doing that at Walgreens for several  
01:16:11 12 years?

01:16:12 13 **A** Yes.

01:16:12 14 **Q** Is that something that Walgreens agreed to do as part  
01:16:18 15 of an agreement with the DEA?

01:16:22 16 **A** I believe it is in there, in the MOA, but we had  
01:16:26 17 already made that decision that we were going to do the  
01:16:29 18 annual training when I launched the target drug policy.

01:16:35 19 **Q** When the DEA reaches out and asks Walgreens to add  
01:16:39 20 something to its training or to its policies and procedures,  
01:16:44 21 do you personally take that seriously?

01:16:46 22 **A** Yes.

01:16:46 23 **Q** Do the people you work with take that seriously?

01:16:51 24 **A** Yes.

01:16:51 25 **Q** I want to ask you just a few questions about hiring of



01:16:54 1 new pharmacists at Walgreens or, you know, experienced  
01:16:57 2 pharmacists, just hiring of pharmacists.

01:16:59 3 Does -- well, what does Walgreens do when it wants to  
01:17:03 4 hire a new pharmacist? How does it find candidates?

01:17:06 5 **A** We recruit at pharmacy schools, we have a  
01:17:15 6 Walgreens.com careers website where applicants can put forth  
01:17:20 7 their application for hire. So mostly those two places.

01:17:27 8 **Q** Does Walgreens have cameras in every pharmacy?

01:17:30 9 **A** We do.

01:17:31 10 **Q** Do the pharmacists who work there know that?

01:17:33 11 **A** Yes.

01:17:33 12 **Q** Does Walgreens have inventory control systems that are  
01:17:37 13 designed to identify missing inventory due to employee  
01:17:40 14 theft?

01:17:41 15 **A** Yes.

01:17:42 16 **Q** Do the pharmacists know that?

01:17:45 17 **A** Yes.

01:17:47 18 **Q** Is it fair to say that to be a pharmacist at  
01:17:51 19 Walgreens, you need to be comfortable with a fair amount of  
01:17:53 20 corporate oversight?

01:17:54 21 MR. WEINBERGER: Objection.

01:18:01 22 THE COURT: Overruled.

01:18:02 23 **A** Yes.

01:18:02 24 **Q** What is the starting salary for a pharmacist at  
01:18:04 25 Walgreens?

01:18:05 1 **A** On average, a hundred thousand.

01:18:10 2 **Q** If you're an experienced pharmacist, can you say as a  
01:18:13 3 general matter what the average, is there like a top salary?

01:18:16 4 **A** Pharmacy managers will make more, and it will vary  
01:18:21 5 based on cost of living in the market, where pharmacists in  
01:18:27 6 Ohio might make less money than a pharmacist in  
01:18:29 7 San Francisco.

01:18:30 8 **Q** All right. Now, I'm going to change to my next set of  
01:18:33 9 questions. I'm going to ask you questions about Walgreens'  
01:18:37 10 policies and procedures for dispensing of controlled  
01:18:39 11 substances, okay?

01:18:41 12 **A** Okay.

01:18:41 13 **Q** I think you testified earlier, but I want to make sure  
01:18:43 14 it's clear, are there two controlled substance dispensing  
01:18:51 15 policies, roughly speaking, at Walgreens?

01:18:52 16 **A** Yes.

01:18:52 17 **Q** What are those two policies?

01:18:53 18 **A** There's an overarching good faith dispensing policy  
01:18:57 19 that is intended for all controlled substances, no matter  
01:19:00 20 what. And then there's the target drug good faith  
01:19:04 21 dispensing policy, which is for select drugs.

01:19:07 22 **Q** All right. I'm going to start with the good faith  
01:19:09 23 dispensing policy which you referred to as the overarching  
01:19:12 24 dispensing policy. But before I asked you about the policy  
01:19:18 25 itself, I want to go back to some of the questions the

01:19:20 1 plaintiffs' lawyer asked you today about an e-mail exchange  
01:19:24 2 between you and your team about what you were doing to put  
01:19:28 3 in place addition policies, programs, because the DEA had  
01:19:35 4 asked you to do that in relation to a store in San Diego.

01:19:38 5 Do you remember those questions?

01:19:39 6 **A** Yes.

01:19:39 7 **Q** The plaintiffs' lawyer showed you an e-mail, and I'll  
01:19:46 8 ask you to see if you can find it in your stack, it's  
01:19:49 9 Plaintiffs' Exhibit 19566.

01:20:11 10 **A** Yes.

01:20:21 11 **Q** Is that what I've got up on the screen here as well?

01:20:24 12 **A** Yes.

01:20:33 13 **Q** I'm going to scroll down to the e-mail on the bottom  
01:20:36 14 half of the first page from you to Cheryl, Tomson, and Al.

01:20:41 15 Do you remember questions about this e-mail earlier  
01:20:43 16 today?

01:20:43 17 **A** Yes.

01:20:43 18 **Q** Your e-mail says, "The document attached is what the  
01:20:55 19 DEA wants us to agree to. When you open the attachment, it  
01:20:58 20 has various sections lettered A through M."

01:21:03 21 Do you see that?

01:21:03 22 **A** Yes.

01:21:03 23 **Q** And it says, "Debbie has added a few things in blue.  
01:21:08 24 Below is what we need to accomplish. I will only put the  
01:21:11 25 sections we need to work on."

01:21:13 1 Do you see that?

01:21:14 2 **A** Yes.

01:21:14 3 **Q** And then below your -- that first paragraph you have a  
01:21:22 4 number of sections that start with section C.

01:21:27 5 Do you see that?

01:21:27 6 **A** Yes.

01:21:27 7 **Q** It goes C, then there's section D, E. If we carry  
01:21:33 8 over to the next page, you can see you continued with  
01:21:38 9 sections F, G, J, and M.

01:21:41 10 Do you see that?

01:21:41 11 **A** Yes.

01:21:41 12 **Q** Are those the sections you were telling your team  
01:21:45 13 needed to be worked on?

01:21:46 14 **A** Yes.

01:21:46 15 **Q** You did not mention in your e-mail sections A or B,  
01:21:51 16 correct?

01:21:51 17 **A** Correct.

01:21:52 18 **Q** All right. Then if we carry over to I think it's page  
01:21:56 19 5 is the memo from Debbie Platts to you.

01:22:02 20 Do you see that?

01:22:04 21 **A** Yes.

01:22:04 22 **Q** And you can see if you look down through it she's got  
01:22:08 23 sections A through M?

01:22:09 24 **A** Yes.

01:22:10 25 **Q** All right. Let's look at sections A and B. These are

01:22:13 1 the ones that you did not include as sections that needed to  
01:22:17 2 be worked on.

01:22:21 3 Start with A. It says, "Walgreens agrees to maintain  
01:22:25 4 a compliance program to detect and avoid violations of the  
01:22:28 5 Controlled Substances Act and applicable DEA regulations."

01:22:31 6 Do you see that?

01:22:32 7 **A** I do.

01:22:32 8 **Q** Did Walgreens already have a compliance program to  
01:22:35 9 detect and avoid violations of the CSA and applicable DEA  
01:22:40 10 regulations in June of 2010, the date of this memo?

01:22:43 11 **A** Yes.

01:22:44 12 **Q** Okay. And just to be clear, I mean, you agreed to  
01:22:47 13 continue to do that, right?

01:22:48 14 **A** Yes.

01:22:49 15 **Q** All right. Then section B says, "This program shall  
01:22:54 16 include procedures to identify the common signs associated  
01:22:58 17 with the diversion of controlled substances, including, but  
01:23:03 18 not limited to, doctor shopping and requests for early  
01:23:06 19 refills."

01:23:07 20 Do you see that?

01:23:07 21 **A** Yes.

01:23:07 22 **Q** And then Debbie says, "I could not find anything in  
01:23:12 23 our procedures that addressed this request." And she has a  
01:23:15 24 suggestion here about a pharmacy code of conduct.

01:23:18 25 Do you see that?

01:23:19 1 **A** Yes.

01:23:19 2 **Q** Did Walgreens already have a good faith dispensing  
01:23:23 3 policy in place that identified common signs associated with  
01:23:27 4 the diversion of controlled substances in 2010?

01:23:30 5 **A** Yes.

01:23:30 6 **Q** Common signs associated with diversion, is that just  
01:23:34 7 another way of saying red flags?

01:23:38 8 **A** Yes.

01:23:38 9 **Q** All right. Now I'd like to ask you some questions  
01:23:40 10 about the good faith dispensing policy at Walgreens itself.

01:23:44 11 What is the good faith dispensing policy?

01:23:49 12 **A** The good faith dispensing policy is a policy that  
01:23:53 13 explains to our pharmacists our expectations with their  
01:23:57 14 corresponding responsibility when filling controlled  
01:24:00 15 substance prescriptions.

01:24:01 16 **Q** Does the good faith dispensing policy identify red  
01:24:04 17 flags that pharmacists are supposed to be aware of?

01:24:06 18 **A** Yes.

01:24:06 19 **Q** How long has Walgreens had a good faith dispensing  
01:24:10 20 policy?

01:24:10 21 **A** I remember talking about a good faith dispensing  
01:24:16 22 policy when I became a pharmacist, but I know I've seen  
01:24:19 23 written good faith dispensing policies since 1989.

01:24:23 24 **Q** I'm going to put one on the screen.

01:24:28 25 Well, I'll ask you do you recognize the document that

01:24:30 1 I'm just put on the screen?

01:24:31 2 **A** Yes.

01:24:31 3 **Q** What is it?

01:24:32 4 **A** It's our good faith dispensing policy from 1998.

01:24:36 5 **Q** I think I just heard you say you recall written good  
01:24:41 6 faith dispensing policies that go back even further than  
01:24:43 7 this; is that right?

01:24:44 8 **A** No, I think I misspoke the year. I graduated in '89.  
01:24:48 9 But I remember having a policy. I don't remember what it  
01:24:50 10 looked like or anything like that. But I do recognize this  
01:24:54 11 one from 1998.

01:24:57 12 **Q** Now, I'm going to focus on the bullet list under  
01:25:03 13 Elements at the top half of the page.

01:25:05 14 Do you see that?

01:25:06 15 **A** I do.

01:25:06 16 **Q** Well, first of all, just to walk through it because I  
01:25:09 17 don't know that we've spent much time on the good faith  
01:25:12 18 dispensing, actually what it says.

01:25:13 19 The first paragraph says, "The pharmacist must use the  
01:25:18 20 elements of good faith dispensing in conjunction with state  
01:25:21 21 and federal controlled substances" probably meant to say  
01:25:27 22 controlled substances laws there.

01:25:27 23 Do you agree with that?

01:25:28 24 **A** Yes.

01:25:29 25 **Q** "When filling all prescriptions, the pharmacist must

01:25:32 1 determine if a prescription for a controlled substance is  
01:25:35 2 dispensed for a legitimate medical purpose."

01:25:39 3 Do you see that there?

01:25:40 4 **A** Yes.

01:25:40 5 **Q** All right. I want to focus your attention, I have a  
01:25:43 6 number of questions about this bullet list under Elements.

01:25:46 7 It says, "The elements of good faith dispensing that  
01:25:50 8 should alert a pharmacist to questionable circumstances  
01:25:53 9 are:"

01:25:56 10 And then there's a bullet list of depending on how you  
01:25:59 11 count it, either seven or 10 items there.

01:26:02 12 Do you see that?

01:26:03 13 **A** Yes.

01:26:06 14 **Q** As a pharmacist, do you recognize the questionable  
01:26:10 15 circumstances that are listed here as red flags?

01:26:16 16 **A** Yes.

01:26:16 17 **Q** I'd like to walk you through each of these.

01:26:19 18 The first one on the list -- see if I can make this  
01:26:22 19 bigger.

01:26:25 20 The first red flag on the list, it says, "Numerous  
01:26:33 21 controlled substance prescriptions written by the same  
01:26:36 22 prescriber or numerous prescribers."

01:26:38 23 Do you see that?

01:26:39 24 **A** Yes.

01:26:39 25 **Q** So I want to ask you a question about this bullet



01:26:43 1 point.

01:26:43 2 If a patient presents an opioid prescription or  
01:26:48 3 multiple opioid prescriptions with overlapping days of  
01:26:52 4 supply that were written by two or more doctors, would that  
01:26:56 5 be captured by this item in the 1998 good faith dispensing  
01:27:00 6 policy?

01:27:00 7 **A** Yes.

01:27:01 8 **Q** Would that be a concern for the pharmacist?

01:27:06 9 **A** It would be something that the pharmacist should be  
01:27:10 10 taking into consideration when doing their evaluation.

01:27:13 11 **Q** Is the circumstance that I just described, a patient  
01:27:18 12 presents opioid prescriptions written by multiple doctors,  
01:27:23 13 is that something that you would refer to as doctor shopping  
01:27:25 14 today?

01:27:27 15 **A** You'd have to understand the circumstances around it,  
01:27:31 16 but it could be.

01:27:33 17 **Q** Was doctor shopping a term that was used by  
01:27:36 18 pharmacists in 1998, if you know?

01:27:38 19 **A** Yes.

01:27:38 20 **Q** Are there circumstances where a patient presenting  
01:27:43 21 opioid prescriptions from more than one prescriber would not  
01:27:47 22 be a concern?

01:27:48 23 **A** Yes.

01:27:51 24 **Q** Why would a patient ever go to two different doctors  
01:27:56 25 for the same medication?

01:27:57 1 **A** It could be that their prescriber is in a medical  
01:28:04 2 practice that has multiple doctors, and maybe their doctor  
01:28:08 3 was on vacation or they didn't see that doctor at the time,  
01:28:12 4 or they went to the hospital for something else. There  
01:28:15 5 could be a lot of reasons and would be something that the  
01:28:21 6 pharmacists would want to evaluate and take into  
01:28:24 7 consideration.

01:28:24 8 **Q** Based on that pharmacist's knowledge of the patient  
01:28:29 9 and the prescriber, is it possible that a prescription that  
01:28:33 10 fit this description wouldn't be a red flag to that  
01:28:36 11 pharmacist at all?

01:28:37 12 **A** It's possible.

01:28:41 13 **Q** Still focused on that first bullet in the 1998 good  
01:28:44 14 faith dispensing policy, if a patient presents prescriptions  
01:28:48 15 for two short-acting opioids on the same day, would that be  
01:28:52 16 captured by this red flag?

01:28:55 17 **A** Yes.

01:28:56 18 **Q** Would that be a concern that you would want a  
01:28:58 19 pharmacist to look out for?

01:28:59 20 **A** Yes.

01:28:59 21 **Q** Would you agree with me, Ms. Polster, that there are a  
01:29:06 22 number of ways for a pharmacist to resolve a red flag?

01:29:08 23 **A** Yes.

01:29:08 24 **Q** All right. Now I want to ask you about the second  
01:29:12 25 bullet in the 1998 good faith dispensing policy. It says,

01:29:17 1 "Numerous prescriptions submitted by the same person."

01:29:22 2 Could that include numerous prescriptions for an  
01:29:26 3 unusual combination of medications, like an opioid and a  
01:29:30 4 benzodiazapine?

01:29:30 5 **A** It could.

01:29:31 6 **Q** The jury has heard about cocktail or trinity  
01:29:36 7 prescriptions in this case.

01:29:39 8 What is a cocktail prescription?

01:29:41 9 **A** The DEA refers to the cocktail as an opioid,  
01:29:47 10 benzodiazapine, and a muscle relaxant prescribed at the same  
01:29:52 11 time or for the patient to take at the same time.

01:29:53 12 **Q** Is that something that you want your pharmacists at  
01:29:57 13 Walgreens to look out for?

01:29:58 14 **A** Yes.

01:30:00 15 **Q** Has Walgreens trained its pharmacists to watch out for  
01:30:04 16 cocktail or other unusual combinations of medications for as  
01:30:09 17 long as you can remember?

01:30:10 18 **A** Yes.

01:30:12 19 **Q** But I think I heard you testify earlier today that  
01:30:14 20 there are circumstances where you have seen personally that  
01:30:20 21 it would be appropriate to fill a prescription for an  
01:30:23 22 unusual combination like that; is that a fair  
01:30:25 23 characterization?

01:30:26 24 **A** Yes.

01:30:26 25 **Q** When you're looking at a combination -- unusual

01:30:32 1 combination prescription, something like a cocktail or an  
01:30:35 2 opioid and a benzodiazapine, does it make a difference to  
01:30:38 3 you if the prescriptions are all presented at the same time?

01:30:43 4 **A** Well, that would -- well, I guess it would depend if  
01:30:50 5 they were all presented at the same time written by the same  
01:30:54 6 doctor or if they were different doctors.

01:30:55 7 **Q** What's the difference in your mind?

01:30:57 8 **A** Well, if it's the same doctor, then you're aware that  
01:31:03 9 that doctor knows that that patient is taking those  
01:31:07 10 medications, and they prescribed them.

01:31:12 11 **Q** So let me stop you right there.

01:31:13 12 Are you saying that there could be a situation where  
01:31:15 13 it would give you more comfort if those prescriptions, those  
01:31:20 14 combination prescriptions, were written by the same doctor?

01:31:22 15 **A** Well, different steps would have to be taken in that  
01:31:29 16 instance.

01:31:31 17 **Q** What were you meaning to explain when you said it  
01:31:34 18 would depend if they were written by the same doctor or not?

01:31:37 19 **A** So if they're written by the same doctor, then you  
01:31:40 20 would know as a pharmacist that that doctor prescribed them.  
01:31:42 21 If they were written by different prescribers, the  
01:31:49 22 pharmacist may want to do due diligence to contact each of  
01:31:53 23 the other prescribers to make sure that they were aware that  
01:31:55 24 the other doctors prescribed controlled substances for that  
01:31:59 25 same patient.

01:32:00 1 Q Are there circumstances where the fact that one doctor  
01:32:05 2 wrote prescriptions for an opioid, a benzodiazapine, and a  
01:32:09 3 muscle relaxer increased your suspicion?

01:32:13 4 A I guess it would depend on the dose. You'd have to  
01:32:18 5 understand the doctor's prescribing patterns as well as what  
01:32:24 6 was going on with the patient at the time.

01:32:25 7 Q Okay. The next item in the 1998 good faith dispensing  
01:32:28 8 policy has three subparts, and I'll try to take them one by  
01:32:32 9 one.

01:32:33 10 The first is "Increased frequency of prescriptions for  
01:32:37 11 the same controlled drug: By one prescriber."

01:32:42 12 Why is that a potential concern?

01:32:44 13 A Well, you know, if the patient continues to bring in a  
01:32:54 14 controlled substance prescription from the same prescriber  
01:32:57 15 more often than what the prescription should last, that  
01:33:01 16 would be something that the pharmacist would want to  
01:33:04 17 evaluate before moving forward and filling the prescription.

01:33:07 18 Q All right. The next one says, "Increased frequency of  
01:33:11 19 prescriptions for the same controlled drug: For large  
01:33:16 20 numbers of patients."

01:33:17 21 I have a pretty specific question for you about this  
01:33:20 22 one. I'll give you an example.

01:33:21 23 If four or more patients presented prescriptions for  
01:33:26 24 the same drug, the same dose, written by the same  
01:33:31 25 prescriber, all on the same day, would that be the kind of

01:33:34 1 scenario that would be captured by this red flag in  
01:33:38 2 Walgreens' 1998 policy?

01:33:40 3 **A** Yes.

01:33:40 4 **Q** Would that scenario that I just described always be a  
01:33:45 5 red flag, for example, if you have four people on the same  
01:33:49 6 day but one of them comes in at 8:00 in the morning, one  
01:33:52 7 comes at noon, one comes at 2:00 in the afternoon, one comes  
01:33:56 8 at 5:00 p.m., would it be the same kind of a scenario?

01:33:59 9 **A** It would be a different scenario.

01:34:04 10 **Q** Is it possible that prescriptions along the types of  
01:34:09 11 examples that I just described wouldn't present a red flag  
01:34:11 12 at all to a pharmacist depending on the knowledge of the  
01:34:14 13 patient, the prescriber, the prescriptions?

01:34:17 14 **A** Yes, it's possible.

01:34:18 15 **Q** All right. The next item on the list in this 1998  
01:34:28 16 policy is, "Increased frequency of prescriptions for the  
01:34:31 17 same controlled drug: For quantities beyond those normally  
01:34:35 18 prescribed."

01:34:35 19 Why is that a concern that Walgreens wanted its  
01:34:38 20 pharmacists to look out for?

01:34:41 21 **A** Well, you'd want to make sure that when dispensing  
01:34:43 22 your controlled substances, if you have a prescriber that  
01:34:45 23 you know to only prescribe 10 tablets at a time and all of a  
01:34:50 24 sudden a prescription comes in for a hundred, you as the  
01:34:55 25 pharmacist would take pause and look to make sure that the

01:34:59 1 doctor did really intend to write it for 100 or what was  
01:35:03 2 happening that would change that prescriber's prescribing  
01:35:11 3 habit.

01:35:11 4 **Q** The next item on the list in the 1998 policy is,  
01:35:16 5 "Unusual dosages or instructions in conflict with approved  
01:35:19 6 labeling."

01:35:20 7 What does that mean?

01:35:25 8 **A** Medications are given recommended prescribing to the  
01:35:31 9 prescriber and also that pharmacists use as references. And  
01:35:37 10 if a dose came in that was out of the ordinary, for example,  
01:35:40 11 you have a patient who's never taken an opioid before and  
01:35:44 12 they come in with a high dosage or a high MME, that would be  
01:35:51 13 something the pharmacist would want to stop and make sure  
01:35:53 14 that it's safe to dispense.

01:35:55 15 **Q** Are there circumstances where a patient, a new patient  
01:35:59 16 coming in with a high dose prescription could be explained  
01:36:03 17 right off the bat by the pharmacist looking at the patient  
01:36:05 18 and it wouldn't be a red flag?

01:36:06 19 **A** The pharmacist would need to do their due diligence,  
01:36:12 20 but what would tell them if they're a new patient to  
01:36:15 21 Walgreens is looking at the state PDMP.

01:36:19 22 **Q** Okay. All right. The next one on the list is  
01:36:23 23 "Unusual geographical distances between patient, pharmacist,  
01:36:27 24 and prescriber."

01:36:28 25 Do you see that one?

01:36:30 1 **A** Yes.

01:36:30 2 **Q** This is one that I think the jury has heard a fair  
01:36:32 3 amount about. The 1998 good faith dispensing doesn't  
01:36:38 4 provide a specific distance that Walgreens has decided is  
01:36:43 5 unusual across the board; is that a fair statement?

01:36:46 6 **A** Yes.

01:36:46 7 **Q** Why is that?

01:36:47 8 **A** Well, there could be reasons why a patient would need  
01:36:51 9 to travel to a specialist that maybe, you know, they live in  
01:36:57 10 a rural town and they need to see a specialist, and it would  
01:37:01 11 be further than a certain mileage number. I mean, there are  
01:37:05 12 some patients that travel across state lines to seek  
01:37:08 13 treatment at specialty-type medical centers.

01:37:15 14 **Q** Are there other reasons why a patient might need to  
01:37:18 15 travel more than a particular distance to see the pharmacy  
01:37:22 16 or the doctor?

01:37:23 17 **A** Yes.

01:37:26 18 **Q** Can a pharmacist use a bright-line rule of, say, 25  
01:37:30 19 miles and call that an unusual distance?

01:37:32 20 **A** They could, but they would need to resolve it. So  
01:37:37 21 you'd have to take the entire situation into consideration,  
01:37:45 22 but it would be -- it needs to be explained as to why the  
01:37:47 23 patient is going a long distance.

01:37:49 24 **Q** Are there circumstances, depending on the community,  
01:37:52 25 the location of the pharmacy, the size of the city or town,



01:37:57 1 where 25 miles wouldn't be unusual at all?

01:38:00 2 **A** Yes.

01:38:03 3 **Q** Has Walgreens ever included a bright-line distance in  
01:38:11 4 its dispensing policies that it has determined are unusual?

01:38:14 5 **A** No.

01:38:14 6 **Q** Do you agree, Ms. Polster, that as a pharmacist you  
01:38:20 7 tend to get to know your patients and the prescribers in the  
01:38:23 8 area?

01:38:23 9 **A** Yes.

01:38:23 10 **Q** All right. The next item on the list in the 1998 good  
01:38:29 11 faith dispensing policy is, "Consistent prescription of  
01:38:34 12 habit forming drugs."

01:38:36 13 The question I have for you about this one is, if a  
01:38:39 14 patient is taking an opioid for a lengthy period of time,  
01:38:43 15 would that be something that could fall under this red flag  
01:38:47 16 in the 1998 policy?

01:38:49 17 **A** Yes.

01:38:49 18 **Q** Is that something that Walgreens wants its pharmacists  
01:38:53 19 to look out for?

01:38:54 20 **A** Yes.

01:38:54 21 **Q** Okay. Below the bullet list on the first page of the  
01:39:04 22 1998 good faith dispensing policy it says -- let me call  
01:39:12 23 this out for you -- "If a pharmacist becomes aware of  
01:39:20 24 circumstances including one or more elements of good faith  
01:39:23 25 dispensing, the pharmacist should: Not dispense the drug."

01:39:29 1 Do you see that?

01:39:30 2 **A** Yes.

01:39:30 3 **Q** Is that something that has been policy at Walgreens as  
01:39:36 4 long as you can remember for pharmacists?

01:39:38 5 **A** Yes.

01:39:38 6 **Q** And the second-to-last paragraph on this page says,  
01:39:50 7 "The pharmacist must exercise professional judgment  
01:39:53 8 regarding the patient's continued need for controlled  
01:39:57 9 substances."

01:39:57 10 Do you agree with that statement?

01:39:59 11 **A** Yes.

01:39:59 12 **Q** It says, "The pharmacist must contact the prescriber  
01:40:03 13 when all elements of good faith dispensing cannot be met."

01:40:08 14 Does that mean that if there are red flags on a  
01:40:12 15 prescription that can't be resolved, you're supposed to call  
01:40:16 16 the doctor?

01:40:16 17 **A** Yes.

01:40:16 18 **Q** Is calling the doctor the only thing that a pharmacist  
01:40:23 19 is supposed to do if they can't resolve red flags?

01:40:25 20 **A** No.

01:40:25 21 **Q** If a doctor says either today or to a pharmacist in  
01:40:29 22 1998 when they -- when the pharmacist picks up the phone  
01:40:32 23 about a prescription, if the doctor says, just fill it, is  
01:40:36 24 that what the pharmacist is supposed to do?

01:40:37 25 **A** No.

01:40:37 1 Q If the red flag that the pharmacist is concerned about  
01:40:42 2 is something suspicious about the doctor, is the pharmacist  
01:40:46 3 supposed to just take the doctor's word that it's a good  
01:40:50 4 prescription?

01:40:51 5 A No.

01:40:51 6 Q What is the pharmacist supposed to do in that  
01:40:52 7 circumstance?

01:40:53 8 A Well, after they exercise their due diligence, then  
01:40:58 9 they should not dispense the prescription if they feel that  
01:41:03 10 they haven't met their corresponding responsibility to  
01:41:06 11 ensure the prescription was written in good faith.

01:41:09 12 Q I'm going to show you -- well, I'll ask you to look at  
01:41:12 13 Tab 2 in your binder, the one that I gave you.

01:41:18 14 A Okay.

01:41:18 15 Q Do you recognize the document behind Tab 2?

01:41:21 16 A I do.

01:41:22 17 Q What is it?

01:41:22 18 A It is another good faith dispensing policy from --  
01:41:29 19 well, let's see, it was revised in 2005 and revised again in  
01:41:32 20 2006.

01:41:34 21 Q Let's just get the date on this one.

01:41:39 22 Are you looking at the dates at the bottom of the  
01:41:41 23 second page?

01:41:42 24 A Yes.

01:41:42 25 Q So you can see that the latest revision is from June

01:41:45 1 of 2006?

01:41:45 2 **A** Yes.

01:41:46 3 **Q** All right. I'm going to go back to the first page.

01:41:51 4 THE COURT: Just to be clear, this is 00071?

01:41:54 5 MS. SWIFT: Yes, Your Honor. My apologies.

01:41:56 6 THE COURT: Okay. I just want to make sure  
01:41:57 7 the record's clear.

01:41:58 8 MS. SWIFT: Thank you.

01:42:00 9 **Q** You can see at the top of the page -- I'll call it  
01:42:05 10 out -- it says again Elements.

01:42:08 11 And is that the same list of red flags we were looking  
01:42:10 12 at before?

01:42:10 13 **A** Yes.

01:42:11 14 **Q** Then on the bottom of the page do you see, I think --  
01:42:17 15 it's depending how you count, it's the fifth bullet. I'll  
01:42:22 16 try to call it out for you.

01:42:28 17 It says, "If the prescriber informs the pharmacist  
01:42:32 18 that a prescription for a controlled substance is not valid  
01:42:34 19 or authorized, contact law enforcement."

01:42:41 20 Do you know from your personal experience that  
01:42:44 21 pharmacists do contact law enforcement when they identify  
01:42:49 22 fraudulent prescriptions?

01:42:52 23 MR. WEINBERGER: Objection.

01:42:59 24 MS. SWIFT: I can withdraw the question.

01:43:00 25 THE COURT: I'm going to sustain that the way

01:43:04 1 it's said.

01:43:05 2 MS. SWIFT: I'll ask it a different way.

01:43:05 3 **Q** Do you know why this provision is in the 2006 good  
01:43:08 4 faith dispensing policy?

01:43:10 5 **A** Yes, because if the pharmacist identified a fraudulent  
01:43:14 6 prescription, it's against the law, and we asked our  
01:43:19 7 pharmacists to contact local law enforcement to let them  
01:43:21 8 know that this patient was trying to pass a fraudulent  
01:43:24 9 prescription.

01:43:24 10 **Q** Do you know whether pharmacists at Walgreens do that  
01:43:27 11 every single time they refuse a prescription?

01:43:31 12 MR. WEINBERGER: Objection.

01:43:33 13 MS. SWIFT: Just asking if she knows.

01:43:35 14 THE COURT: Overruled.

01:43:36 15 **A** No, I don't.

01:43:38 16 THE COURT: Are you asking today? I mean,  
01:43:40 17 over 20 years what --

01:43:42 18 MR. WEINBERGER: There's no foundation, Your  
01:43:44 19 Honor.

01:43:44 20 MS. SWIFT: I was asking her ...

01:43:46 21 **Q** Do you know whether pharmacists at Walgreens contact  
01:43:49 22 law enforcement every single time they refuse a  
01:43:53 23 prescription?

01:43:53 24 **A** No, I don't.

01:43:56 25 MR. WEINBERGER: Objection.

01:43:56 1 THE COURT: I'm going to -- let's go on the  
01:43:58 2 headphones.

01:44:03 3 (At side bar at 1:44 p.m.)

01:44:11 4 THE COURT: All right. Ms. Swift, in  
01:44:12 5 reviewing the question I'm going to sustain the objection  
01:44:14 6 because it presumes that Walgreens pharmacists do refuse to  
01:44:21 7 fill prescriptions. And we just had a study that was -- she  
01:44:25 8 talked about where when they did a survey in a thousand of  
01:44:29 9 the stores the pharmacists had not filled -- not refused a  
01:44:31 10 single prescription in a year.

01:44:34 11 So I'm going to sustain the objection the way you've  
01:44:37 12 asked it.

01:44:37 13 MS. SWIFT: I'll move on. I'll come back to  
01:44:40 14 the survey you were just talking about, but I'll ask the  
01:44:42 15 question a different way.

01:44:43 16 THE COURT: Okay. Thank you.

01:44:48 17 (In open court at 1:44 p.m.)

01:44:57 18 BY MS. SWIFT:

01:44:58 19 Q Ms. Polster, has it always been Walgreens' policy to  
01:45:02 20 instruct pharmacists to call law enforcement when they  
01:45:04 21 identify a fraudulent prescription?

01:45:05 22 MR. WEINBERGER: Objection.

01:45:09 23 THE COURT: I think you need to put a time  
01:45:12 24 frame on that, Ms. Swift.

01:45:13 25 Q All right. We're looking at a 2006 Walgreens

01:45:17 1 dispensing policy, right?

01:45:18 2 **A** Yes.

01:45:18 3 **Q** In 2006, was Walgreens empowering pharmacists to  
01:45:24 4 contact law enforcement when they deemed it appropriate?

01:45:28 5 MR. WEINBERGER: Objection.

01:45:33 6 THE COURT: The way you're asking it, I'm  
01:45:34 7 going to sustain the objection.

01:45:37 8 **Q** The policy goes on to say, "If the prescriber can't be  
01:45:45 9 reached, do not dispense."

01:45:48 10 Do you see that at the bottom of the page?

01:45:49 11 **A** Yes.

01:45:49 12 **Q** We've seen that before in the earlier policy as well,  
01:45:53 13 correct?

01:45:53 14 **A** Yes.

01:45:57 15 **Q** All right. Now I'd like you to turn to Tab 3 in your  
01:46:00 16 binder. And this is Exhibit 211.

01:46:06 17 **A** Yes.

01:46:06 18 **Q** Do you recognize Exhibit 211?

01:46:09 19 **A** Yes.

01:46:09 20 **Q** What is it?

01:46:10 21 **A** It is another policy. My 211 doesn't match what's on  
01:46:18 22 the screen though.

01:46:19 23 **Q** No, it doesn't, that's true. Hold on a second.

01:46:23 24 Does it match now?

01:46:24 25 **A** Yes.

01:46:24 1 Q What is that document?

01:46:25 2 A So this is another revised revision to the good faith  
01:46:33 3 dispensing policy from June of 2011.

01:46:37 4 Q All right. And we see again under the word Elements  
01:46:42 5 there is a list of bullets like we've seen before.

01:46:45 6 Would you agree with me, Ms. Polster, that this list  
01:46:47 7 is longer than what we've seen before?

01:46:50 8 A Yes.

01:46:52 9 Q Do you know why the list of red flags in the good  
01:46:57 10 faith dispensing policy got longer in 2011?

01:46:59 11 A Yes.

01:46:59 12 Q Why?

01:47:00 13 A We were starting to see changes that were happening in  
01:47:04 14 the industry. We were starting to see just new things that  
01:47:12 15 were happening that we wanted to include in the policy to  
01:47:16 16 ensure that our pharmacists were aware.

01:47:18 17 Q I think you may have touched on this a little bit  
01:47:22 18 yesterday in your testimony. You said you'd seen new things  
01:47:27 19 start to change in the industry around 2011. I believe you  
01:47:32 20 said something to that effect in response to questions about  
01:47:35 21 when the opioid crisis began.

01:47:37 22 Do you remember that?

01:47:37 23 A I do.

01:47:38 24 Q Were the changes in the industry that you just  
01:47:44 25 referenced a moment ago what you were referring to in your



01:47:47 1 answers yesterday?

01:47:48 2 **A** Yeah, that's some of them, yes.

01:47:51 3 **Q** And I'd like to know a little bit more what you mean  
01:47:53 4 when you say "changes in the industry."

01:47:56 5 What specifically are you talking about?

01:47:57 6 **A** So when more chronic pain medications were coming into  
01:48:03 7 a retail setting versus the acute or the hospice end of life  
01:48:11 8 prescriptions, we were seeing chronic pain patients come  
01:48:15 9 into a retail setting --

01:48:17 10 **Q** Can I stop you right there and ask a follow-up  
01:48:19 11 question?

01:48:19 12 Do you have an understanding based on your experience  
01:48:21 13 at Walgreens why you were seeing more chronic pain patients  
01:48:26 14 in roughly this time frame?

01:48:27 15 **A** I do.

01:48:27 16 **Q** What is that understanding?

01:48:29 17 **A** During that time frame, the regulations changed where  
01:48:34 18 a prescriber who worked at a pain clinic could not dispense  
01:48:40 19 pain medications for the patients that they were prescribing  
01:48:43 20 for.

01:48:44 21 **Q** You said the regulations.

01:48:45 22 Are you talking about specific state laws?

01:48:48 23 **A** I don't know if it was state or federal.

01:48:54 24 **Q** Are you talking about a particular location of the  
01:48:56 25 country?

01:48:57 1 **A** It was my understanding it was nationwide because we  
01:49:02 2 started to see chronic pain patients nationally.

01:49:06 3 **Q** And I think you said a moment ago it was because pain  
01:49:12 4 clinics or pain management clinics were no longer allowed to  
01:49:15 5 dispense directly to patients.

01:49:17 6 Do I have that right?

01:49:18 7 MR. WEINBERGER: Objection.

01:49:21 8 MS. SWIFT: I don't mean to mischaracterize.  
01:49:23 9 I was just trying to get her back to what she just said.

01:49:26 10 THE COURT: Overruled. You can ask what she's  
01:49:28 11 saying.

01:49:28 12 **Q** Is that what you said?

01:49:30 13 **A** Yes.

01:49:30 14 **Q** Why did that have an effect on the patients that  
01:49:34 15 Walgreens was seeing?

01:49:35 16 **A** Because we started to see patients that would come in  
01:49:40 17 that would get larger quantities than, you know, what would  
01:49:43 18 be needed for a broken leg or recovering from a surgery. We  
01:49:48 19 started seeing patients that would have to come in that  
01:49:51 20 would have to be -- their pain would need to be managed  
01:49:55 21 because they weren't a surgical candidate or they didn't  
01:50:00 22 have the benefit of being able to, you know, get better from  
01:50:06 23 their pain quickly.

01:50:07 24 **Q** Is what you're saying that the patients who used to go  
01:50:09 25 to pain clinics were then coming to retail pharmacies like

01:50:14 1 Walgreens?

01:50:14 2 **A** Yes.

01:50:15 3 **Q** Were all of those patients bad patients?

01:50:21 4 **A** No.

01:50:21 5 **Q** Were all of the prescriptions they presented  
01:50:28 6 illegitimate?

01:50:29 7 MR. WEINBERGER: Objection. She wasn't a  
01:50:30 8 pharmacist at the time.

01:50:35 9 THE COURT: I'm going to sustain the  
01:50:36 10 objection.

01:50:37 11 **Q** Do you have an understanding from your experience at  
01:50:39 12 Walgreens as to whether the increase in prescriptions and  
01:50:43 13 patients who came in this time frame to Walgreens, whether  
01:50:47 14 those were all illegitimate prescriptions or not?

01:50:51 15 MR. WEINBERGER: Objection.

01:50:51 16 THE COURT: Sustained.

01:50:55 17 **Q** Do you have and understanding that Walgreens saw an  
01:50:57 18 increase in the number of prescriptions that came into the  
01:50:59 19 stores during this time?

01:51:01 20 MR. WEINBERGER: Objection.

01:51:02 21 THE COURT: I'll allow that. Overruled.

01:51:04 22 **A** Yes, we did see an increase in prescriptions for  
01:51:06 23 chronic pain patients during that time.

01:51:08 24 **Q** Was the change that you saw in this time frame unlike  
01:51:12 25 changes in prescription trends that you had seen previously

01:51:16 1 in your various jobs at Walgreens, including as a pharmacist  
01:51:20 2 and a manager?

01:51:21 3 MR. WEINBERGER: Objection, Your Honor.

01:51:23 4 THE COURT: Sustained.

01:51:29 5 **Q** Ms. Polster, when you said that you believed the  
01:51:32 6 opiate crisis began around this time frame, were you  
01:51:36 7 referring to this change in the types of patients and the  
01:51:39 8 numbers of prescriptions that you saw in that time frame?

01:51:41 9 MR. WEINBERGER: Objection.

01:51:42 10 THE COURT: Well, I'll let her explain her  
01:51:45 11 answer.

01:51:46 12 You can answer that.

01:51:51 13 **A** Yes.

01:51:51 14 **Q** Did you mean to minimize or brush aside in any way  
01:51:53 15 problems with prescription opioid abuse that had been in the  
01:51:59 16 country prior to that time frame?

01:52:00 17 MR. WEINBERGER: Objection.

01:52:00 18 THE COURT: Sustained.

01:52:03 19 **Q** Does Walgreens have any influence over prescribing  
01:52:07 20 practices?

01:52:08 21 **A** No.

01:52:08 22 **Q** Are pharmacists in a better position than prescribers,  
01:52:13 23 in your view, to evaluate legitimate medical need?

01:52:19 24 MR. WEINBERGER: Objection.

01:52:21 25 MS. SWIFT: I'll withdraw it.

01:52:22 1 Q Ms. Polster, do pharmacists examine patients?

01:52:25 2 A No.

01:52:25 3 Q Do pharmacists have access to a patient's full medical  
01:52:30 4 history?

01:52:31 5 A No.

01:52:31 6 Q Can a pharmacist order tests like blood work, X-rays,  
01:52:37 7 and MRIs?

01:52:38 8 A No.

01:52:38 9 Q All right. Turning back to the 2011 good faith  
01:52:44 10 dispensing policy that we've got on the screen.

01:52:45 11 One of the new red flags that was added to this policy  
01:52:50 12 is "Consistent requests for early refills."

01:52:55 13 Do you see that?

01:52:55 14 A Yes.

01:52:55 15 Q What counts as "early"?

01:53:05 16 A There's not a cut and dry answer. It depends on the  
01:53:08 17 circumstance and the patient and what's happening.

01:53:10 18 Q Why had it be a concern in certain circumstances if a  
01:53:17 19 patient is presenting a prescription too early?

01:53:19 20 A If it's the same patient that comes in each time they  
01:53:23 21 need to get their pain medication again and they say, well,  
01:53:28 22 I ran out, I dropped it, it fell in the toilet, there's a  
01:53:35 23 myriad of reasons why a patient would -- you would need to  
01:53:38 24 understand and be able to resolve the reasons why before you  
01:53:42 25 should dispense it.

01:53:45 1 Q If you're a staff pharmacist who has a patient like  
01:53:47 2 what you just described who consistently tries to fill  
01:53:50 3 prescriptions early and is consistently told you can't do  
01:53:53 4 that, is it appropriate as a pharmacist to beg off and ask  
01:53:58 5 one of the other staff pharmacists to fill for that patient?

01:54:01 6 A No.

01:54:01 7 Q Why not?

01:54:02 8 A You can't slough off that responsibility onto another  
01:54:08 9 pharmacist. You know, you could if it's after hours and you  
01:54:13 10 couldn't get ahold of the prescriber to resolve that  
01:54:16 11 particular red flag, you could then leave it for when the  
01:54:24 12 doctor's office is open to contact the doctor the next day.  
01:54:26 13 But to just say, you know what, I'm not filling this, you  
01:54:29 14 fill it, you can't do that, or you shouldn't do that.

01:54:32 15 Q I'll direct your attention to the box at the bottom of  
01:54:34 16 the first page of the 2011 good faith dispensing policy.

01:54:38 17 Do you see that?

01:54:40 18 A Yes.

01:54:41 19 Q It says, among other things, it says, "If asked by law  
01:54:49 20 enforcement to dispense a fraudulent prescription, do not  
01:54:54 21 dispense and inform law enforcement that this is a violation  
01:54:57 22 of state and federal law."

01:55:00 23 Why is that in the 2011 policy?

01:55:02 24 A We were starting to see patients that were trying to  
01:55:07 25 pass fraudulent prescriptions, and the law enforcement would

01:55:12 1 come into the store and say, we know this person is going to  
01:55:17 2 give you a fraudulent prescription, and we want you to fill  
01:55:20 3 it because we want to arrest the patient after they get the  
01:55:25 4 medication.

01:55:26 5 **Q** Was that something that was okay for a pharmacist at  
01:55:28 6 Walgreens to do, in your view?

01:55:30 7 **A** No.

01:55:30 8 **Q** In fact, could a pharmacist get fired for doing that?

01:55:34 9 **A** Yes.

01:55:35 10 **Q** Even if a law enforcement official asked them to do  
01:55:38 11 it?

01:55:38 12 **A** Yes.

01:55:38 13 **Q** And you can see the bottom part of the box says,  
01:55:46 14 "Violation of state and federal law and/or company policy  
01:55:51 15 will result in disciplinary action, up to and including  
01:55:55 16 termination of employment."

01:55:58 17 Did I read that correctly?

01:55:59 18 **A** Yes.

01:55:59 19 **Q** Does Walgreens fire pharmacists who fail to follow the  
01:56:02 20 law?

01:56:02 21 **A** Yes.

01:56:02 22 **Q** Does Walgreens fire pharmacists who knowingly dispense  
01:56:07 23 illegitimate prescriptions?

01:56:09 24 **A** Yes.

01:56:09 25 **Q** Has that been the case for as long as you've been

01:56:13 1 working at Walgreens, as far as you know?

01:56:14 2 **A** Yes.

01:56:22 3 **Q** All right. Take a look at Tab 4 in your binder,  
01:56:24 4 please. This is WAG-MDL-304.

01:56:33 5 Do you recognize what that is, Ms. Polster?

01:56:35 6 **A** Yes.

01:56:36 7 **Q** What is it?

01:56:36 8 **A** It's the 2012 updated good faith dispensing policy.

01:56:44 9 **Q** This one is longer than the previous policies we've  
01:56:47 10 looked at, would you agree with me?

01:56:48 11 **A** Yes.

01:56:49 12 **Q** How many pages is it?

01:56:56 13 **A** Six.

01:56:56 14 **Q** I'm going to direct your attention first to the third  
01:56:59 15 paragraph on the first page.

01:57:06 16 Would you agree me there again it says that "a  
01:57:08 17 pharmacist at Walgreens who does not follow the good faith  
01:57:11 18 dispensing policy can be fired"?

01:57:12 19 **A** Yes.

01:57:12 20 **Q** And we saw that before, right?

01:57:15 21 **A** Yes.

01:57:18 22 **Q** Would you agree with me that knowing you can get fired  
01:57:20 23 for not following company policy is an incentive to follow  
01:57:22 24 the policy?

01:57:25 25 **A** I would think so, yes.



01:57:26 1 Q Walgreens tells its pharmacists they could lose their  
01:57:30 2 jobs if they don't follow the good faith dispensing policy  
01:57:32 3 around red flags, correct?

01:57:33 4 A Yes.

01:57:33 5 Q Could a pharmacist lose their license if they  
01:57:38 6 knowingly dispense illegitimate prescriptions?

01:57:41 7 A It is possible that a board of pharmacy would take  
01:57:46 8 action on a pharmacist, yes.

01:57:46 9 Q Is that something pharmacists know? Is that something  
01:57:49 10 you know as a pharmacist?

01:57:50 11 MR. WEINBERGER: Objection.

01:57:51 12 Q Do you know that as a pharmacist?

01:57:53 13 A Yes.

01:57:53 14 Q All right. Then the format of the 2012 policy is a  
01:58:00 15 little bit different than the ones we've seen previously;  
01:58:03 16 would you agree with that?

01:58:05 17 A Yes.

01:58:05 18 Q I'm going to call out item number 3 on the bottom of  
01:58:12 19 the first page.

01:58:13 20 Do you see that?

01:58:13 21 A Yes.

01:58:13 22 Q It says, "Prescription drug monitoring program, or  
01:58:17 23 PDMP." The jury has heard a lot about PDMPs. That's the  
01:58:23 24 state database of controlled substance prescriptions that  
01:58:26 25 are filled by pharmacies in a given state. Is that a fair

01:58:30 1 characterization?

01:58:31 2 **A** Yes.

01:58:31 3 **Q** Were PDMPs becoming more available in this time frame  
01:58:37 4 in 2012?

01:58:38 5 **A** Yes.

01:58:41 6 **Q** Did Walgreens provide access to state PDMPs for  
01:58:44 7 pharmacists whenever they became available?

01:58:46 8 **A** Yes.

01:58:46 9 **Q** Was Walgreens a frontrunner when it came to making  
01:58:52 10 PDMPs available to its pharmacists?

01:58:54 11 MR. WEINBERGER: Objection.

01:58:59 12 THE COURT: Sustained.

01:59:00 13 **Q** Do the requirements for checking the state PDMP vary  
01:59:06 14 from state to state?

01:59:07 15 **A** Yes.

01:59:07 16 **Q** If checking the PDMP in a particular type of  
01:59:12 17 circumstance is required by state law, does Walgreens  
01:59:16 18 require pharmacists do that that, to follow that law?

01:59:20 19 **A** Yes.

01:59:20 20 **Q** All right. Another item that's new, I think, to this  
01:59:29 21 2012 policy is the last item on this page. It says,  
01:59:37 22 "Data/DUR review."

01:59:39 23 What does that mean?

01:59:41 24 **A** The data review is ensuring that the information that  
01:59:47 25 is typed into the computer system matches exactly what the

01:59:51 1 prescriber wrote.

01:59:53 2 And the DUR review is drug utilization review. That  
02:00:00 3 is where a drug interaction or an alert would show to the  
02:00:04 4 pharmacist about the specific prescription they're filling.

02:00:06 5 **Q** Would the drug interaction alert that you just  
02:00:11 6 referred to, would that capture things like the cocktail  
02:00:14 7 prescriptions you were talking about before?

02:00:15 8 **A** Yes.

02:00:16 9 **Q** Why is that? How does that work?

02:00:19 10 **A** We work with a vendor to review the patient's file,  
02:00:29 11 and it -- the profile hits up against the vendor's database  
02:00:34 12 that contains information about the drugs. And then it --  
02:00:43 13 any drug interaction would be displayed back to the  
02:00:52 14 pharmacist in the filling of the prescription.

02:00:54 15 **Q** So just to make sure I understand, is what you're  
02:00:56 16 saying that there is something in the computer system that  
02:01:00 17 will alert the pharmacist if somebody comes in with a  
02:01:03 18 prescription for an opioid and they're already taking  
02:01:06 19 another drug that might have a bad interaction with that  
02:01:08 20 opioid?

02:01:09 21 MR. WEINBERGER: Objection, Your Honor.

02:01:11 22 **Q** Is that what you were saying?

02:01:12 23 THE COURT: Sustained.

02:01:23 24 **Q** Am I correct that the DUR review is meant to identify  
02:01:26 25 drug-drug interactions?

02:01:27 1 **A** Yes.

02:01:30 2 **Q** If you'll turn to page 2 of the 2012 policy. And at  
02:01:35 3 the beginning of this page 2 it talks about in the second  
02:01:40 4 paragraph it says, "The following are examples that should  
02:01:44 5 alert the pharmacist to questionable circumstances."

02:01:46 6 That's similar language to what we've seen going back  
02:01:48 7 to 1998, would you agree with me?

02:01:50 8 **A** Yes.

02:01:50 9 **Q** It says, "The list is not intended to be all  
02:01:54 10 inclusive."

02:01:54 11 Do you see that?

02:01:55 12 **A** Yes.

02:01:55 13 **Q** And it says, "The pharmacist has a responsibility to  
02:01:59 14 follow up with the patient and/or the prescriber to make  
02:02:01 15 sure the elements of good faith dispensing are met."

02:02:05 16 Did I read that correctly?

02:02:06 17 **A** Yes.

02:02:06 18 MR. WEINBERGER: Your Honor, she's not reading  
02:02:11 19 from the -- she's not correctly reading the document. She's  
02:02:16 20 paraphrasing. I mean --

02:02:18 21 MS. SWIFT: I'm trying to move it along, but  
02:02:19 22 I'm happy to read it all if --

02:02:21 23 THE COURT: Well, let's just go on the  
02:02:23 24 headphones a minute.

02:02:29 25 (At side bar at 2:02 p.m.)

02:02:35 1 THE COURT: I'll remind both sides, if you're  
02:02:40 2 examining a witness with a document that they know, you can  
02:02:44 3 read a paragraph or a sentence or two and say what does that  
02:02:45 4 mean, et cetera, but it's got to be read accurately. If you  
02:02:48 5 want to do it a different way, you can do it a different  
02:02:50 6 way. But if you're going to read it, it's going to be  
02:02:54 7 reading it exactly.

02:02:55 8 MS. SWIFT: Understood, Your Honor. Thank  
02:02:56 9 you.

02:03:02 10 (In open court at 2:03 p.m.)

02:03:21 11 BY MS. SWIFT:

02:03:21 12 Q Ms. Polster, I'm going to go back for one minute to  
02:03:25 13 the provision on the first page about the PDMP requirement  
02:03:30 14 in this policy. I just want to make sure this is clear.

02:03:32 15 This good faith dispensing policy reads exactly: "If  
02:03:38 16 available in your state, use the PDMP to obtain additional  
02:03:41 17 information to help determine the validity and confirm the  
02:03:46 18 appropriateness of the prescription."

02:03:49 19 Did I read that accurately?

02:03:51 20 A Yes.

02:03:51 21 Q Is that a requirement of the good faith dispensing  
02:03:53 22 policy regardless whether state law also requires it?

02:04:00 23 MR. WEINBERGER: Objection.

02:04:01 24 Q Is it a requirement --

02:04:03 25 MS. SWIFT: I'll withdraw the question.

02:04:04 1 THE COURT: I'll allow that question.

02:04:05 2 Q Is it a requirement of the policy?

02:04:06 3 A Yes, if the pharmacist needs it to determine the  
02:04:13 4 appropriateness of the prescription, yes.

02:04:15 5 Q All right. Turning back to page 2 of the 2012 policy.

02:04:21 6 The second paragraph starts out, "The following are  
02:04:27 7 examples that should alert a pharmacist to questionable  
02:04:29 8 circumstances."

02:04:34 9 Do you see that?

02:04:35 10 A Yes.

02:04:35 11 Q Then below that sentence there are a number of other  
02:04:39 12 sentences, and then there are boxes at the bottom of the  
02:04:41 13 page.

02:04:42 14 Would you agree with me?

02:04:43 15 A Yes.

02:04:43 16 Q Are those boxes providing different examples of red  
02:04:51 17 flags?

02:04:51 18 A Yes.

02:04:52 19 Q And if you look onto the following pages, there are  
02:04:56 20 more even than just what's on page 2, correct?

02:04:58 21 A Yes.

02:04:58 22 Q The first box says, "Usual course of professional  
02:05:11 23 practice."

02:05:11 24 Do you see that?

02:05:12 25 A Yes.

02:05:12 1 Q Would you agree with me that some of the examples of  
02:05:17 2 red flags in this box in the 2012 policy are the same as  
02:05:22 3 what we saw before in the earlier policies?

02:05:25 4 A Yes.

02:05:25 5 Q It includes the unusual geographical distances red  
02:05:30 6 flag.

02:05:30 7 Do you see that?

02:05:31 8 A Yes.

02:05:31 9 Q It also includes several other red flags; would you  
02:05:34 10 agree with that?

02:05:35 11 A Yes.

02:05:35 12 Q One of the new ones, I'll ask if you agree with this,  
02:05:39 13 one of them says, "Does the prescription appear to be issued  
02:05:43 14 pursuant to an online diagnosis questionnaire?"

02:05:48 15 Do you see that?

02:05:48 16 A Yes.

02:05:48 17 Q What is an online diagnosis questionnaire?

02:05:50 18 A At that time, we were starting to see prescribers that  
02:06:02 19 were prescribing prescriptions for patients that they may  
02:06:05 20 not have had a relationship with, that the patient could  
02:06:08 21 have gone online and filled out a questionnaire, and the  
02:06:10 22 prescriber took that questionnaire and phoned in a  
02:06:16 23 prescription or sent a prescription to that patient.

02:06:20 24 Q Why is that a concern, if it is?

02:06:22 25 A One of the requirements in dispensing a controlled

02:06:31 1 substance, or any prescription really, is to make sure that  
02:06:35 2 there is a doctor/patient relationship, that the doctor  
02:06:38 3 knows the patient that they are prescribing for.

02:06:45 4 **Q** And do you see the box that says, "Trends for  
02:06:49 5 prescribers and patients"?

02:06:50 6 **A** Yes.

02:06:50 7 **Q** Do you see the bullet that says, "Frequent combination  
02:06:59 8 prescriptions for known drug cocktails, such as  
02:07:04 9 benzodiazapine, opioid, and carisoprodol?

02:07:09 10 **A** Yes.

02:07:09 11 **Q** Is this a more detailed example on unusual  
02:07:12 12 combinations than what we saw on that in early policies?

02:07:16 13 **A** Yes.

02:07:16 14 **Q** Why was that spelled out more specifically in the 2012  
02:07:20 15 policy?

02:07:20 16 **A** Well, about that time we started to see more of that  
02:07:23 17 practice, and the DEA and the industry was using that word,  
02:07:30 18 cocktails. And we added that to the policy to ensure that  
02:07:34 19 our pharmacists had awareness about that.

02:07:38 20 **Q** Now, I'd like to you turn to page 3 of the 2012  
02:07:41 21 policy, if you would, please.

02:07:44 22 Do you see at the top of the page the box that says  
02:07:47 23 "Prescribers"?

02:07:48 24 **A** Yes.

02:07:48 25 **Q** Is this a more detailed list of red flags for



02:07:54 1 prescribers than what we saw before?

02:07:55 2 **A** Yes.

02:07:56 3 **Q** And do you see there's also a box that says

02:08:03 4 "Patients"?

02:08:03 5 **A** Yes.

02:08:03 6 **Q** Is this a more detailed list of red flags for patients

02:08:06 7 than what we saw before?

02:08:08 8 **A** Yes.

02:08:08 9 **Q** The list for patients, let's see if I can find it, it  
02:08:17 10 includes "request to pay by cash or by using a cash discount  
02:08:22 11 card."

02:08:23 12 Do you see that?

02:08:24 13 **A** Yes.

02:08:24 14 **Q** The jury has heard a bit about this before, but why  
02:08:30 15 might cash payment be a concern that you'd want a pharmacist  
02:08:33 16 to look out for?

02:08:34 17 **A** It's not always a concern, but it would be unusual if  
02:08:38 18 the patient has insurance, and they're asking the pharmacy  
02:08:42 19 staff to not bill their insurance when filling the  
02:08:45 20 prescription.

02:08:45 21 **Q** Can a pharmacist see when they're in the Walgreens  
02:08:49 22 computer system whether or not a patient has insurance?

02:08:52 23 **A** Yes.

02:08:52 24 **Q** Then on page 4 of the 2012 good faith dispensing  
02:09:00 25 policy there's a section that says "Document."

02:09:03 1 Do you see that at the top of the page?

02:09:05 2 **A** Yes.

02:09:05 3 **Q** Do you take steps to do what you can to get the  
02:09:08 4 pharmacists to document the resolution of red flags?

02:09:11 5 **A** Yes.

02:09:11 6 **Q** Is it up to the pharmacist in the first instance to  
02:09:15 7 determine whether there is a red flag?

02:09:19 8 **A** Yes.

02:09:19 9 **Q** Why is that up to the pharmacist?

02:09:21 10 **A** Well, the pharmacist may know the circumstances around  
02:09:29 11 the patient better than -- one better than the other, so a  
02:09:33 12 pharmacist that is always at that store that knows that  
02:09:35 13 patient, but if there's a pharmacist that's new to that  
02:09:40 14 location, a floater pharmacist, they're filling in on  
02:09:43 15 vacation or something like that, and they're not familiar  
02:09:47 16 with the patient or the community or the prescriber, that  
02:09:51 17 pharmacist may see it as a red flag where another pharmacist  
02:09:53 18 may not.

02:09:54 19 **Q** Is it necessary to re-document the same thing every  
02:09:59 20 time a patient comes back to fill a prescription if it's  
02:10:02 21 been resolved earlier?

02:10:03 22 MR. WEINBERGER: Objection.

02:10:04 23 **Q** Under Walgreens' policy?

02:10:07 24 MR. WEINBERGER: Objection.

02:10:08 25 THE COURT: Overruled.

02:10:09 1 **A** No, because if it's not a red flag to the pharmacist,  
02:10:12 2 then we would not expect them to document the resolution.

02:10:16 3 **Q** And coming at that from a different angle, just  
02:10:20 4 because a pharmacist documented the resolution of a red flag  
02:10:24 5 on an earlier prescription, does that relieve the later  
02:10:29 6 pharmacist reviewing and evaluating the later prescription?

02:10:34 7 **A** Well, each pharmacist should be taking each  
02:10:37 8 prescription on its own merit, but if -- if I was a  
02:10:42 9 pharmacist and I saw that pain patient come in and I knew  
02:10:48 10 the circumstances around that pain patient and I had already  
02:10:53 11 done my due diligence on that specific page, that specific  
02:10:56 12 doctor, that specific drug, and then that patient were to  
02:11:00 13 come back and have the exact same prescription that was  
02:11:03 14 written by the prescriber and the time made sense, I may not  
02:11:08 15 go to as many steps as I did before because it wasn't a red  
02:11:14 16 flag. It would be appropriate for that time and that  
02:11:17 17 circumstance.

02:11:19 18 **Q** Ms. Polster, is it fair to say that you have spent  
02:11:20 19 years working on policies and procedures and training  
02:11:24 20 regarding those policies and procedures for the dispensing  
02:11:26 21 of controlled substance at Walgreens?

02:11:29 22 **A** Yes.

02:11:30 23 **Q** Based on that experience and based on your knowledge  
02:11:35 24 of how Walgreens pharmacists document the resolution of red  
02:11:40 25 flags, do you have concerns that diligence is not being done

02:11:43 1 at Walgreens?

02:11:44 2 MR. WEINBERGER: Objection.

02:11:55 3 THE COURT: Overruled.

02:11:55 4 **A** Can I say that I -- that diligence is done a hundred  
02:12:03 5 percent on every single prescription? I cannot. We have to  
02:12:05 6 ensure that our pharmacists understand their corresponding  
02:12:09 7 responsibility and doing their due diligence.

02:12:14 8 I have concerns that our policies are in place and  
02:12:17 9 that our pharmacists are following what we're asking them to  
02:12:21 10 do and that they understand their corresponding  
02:12:25 11 responsibility when they are filling a controlled substance.

02:12:26 12 **Q** And do you believe that as a general matter the  
02:12:28 13 pharmacists at Walgreens do that?

02:12:30 14 MR. WEINBERGER: Objection.

02:12:30 15 THE COURT: No, overruled.

02:12:35 16 **A** I do.

02:12:36 17 **Q** Is it true -- and I think you've said a little bit  
02:12:39 18 about this already. I'll try not to belabor it. You  
02:12:44 19 mentioned the floater pharmacist. I think you said at the  
02:12:47 20 beginning of your testimony, you're answering my questions  
02:12:50 21 today, that you yourself were a floater pharmacist.

02:12:52 22 Do I have that right?

02:12:54 23 **A** Yes.

02:12:55 24 **Q** Would you expect that floater pharmacist -- well,  
02:12:59 25 strike that. Let me try to come at this a different way.

02:13:02 1 Is it true that whether a prescription presents a red  
02:13:04 2 flag to begin with depends on the knowledge of the  
02:13:08 3 pharmacist who's reviewing the prescription?

02:13:11 4 **A** Yes.

02:13:14 5 **Q** Would you expect a pharmacist who regularly works at a  
02:13:18 6 pharmacy and knows the patients and the doctors in the  
02:13:22 7 community, to have more knowledge about those patients than  
02:13:24 8 a pharmacist who's new to the job or is it floater?

02:13:28 9 **A** New to the location and the prescribing practices and  
02:13:32 10 maybe that specific patient, yes.

02:13:37 11 **Q** How might a floater pharmacist's identification of red  
02:13:41 12 flags differ from a pharmacist who regularly works in the  
02:13:46 13 pharmacy?

02:13:48 14 **A** Let's say that you're at a small rural community, and  
02:13:58 15 I'm not familiar with Ohio so I'm going to use Illinois as  
02:14:03 16 an example.

02:14:04 17 But you're in a farming community in the middle of the  
02:14:07 18 state, and a patient brings a prescription from Northwestern  
02:14:14 19 Hospital, which is a big hospital in Chicago. There's a lot  
02:14:17 20 of specialists there. There may be a -- it may be a far  
02:14:24 21 distance to get from Northwestern to the pharmacy that I'm  
02:14:28 22 working at in the small rural community in Illinois, and  
02:14:32 23 that could be a red flag to the floater pharmacist as to why  
02:14:34 24 is that patient going all the way to Northwestern to get  
02:14:38 25 that prescription.

02:14:39 1 Q If a patient who is known to you as not having  
02:14:49 2 insurance pays cash for a prescription and drives 26 miles  
02:14:54 3 for an explainable reason, is that a red flag that needs to  
02:15:00 4 be documented?

02:15:01 5 A Not necessarily.

02:15:05 6 Q As a pharmacist for more than three decades, has it  
02:15:08 7 ever been your understanding that there is a legal  
02:15:11 8 requirement to document the resolution of red flags?

02:15:17 9 A Not a legal requirement. A best practice.

02:15:20 10 Q If you're talking about a pharmacist's obligation to  
02:15:25 11 document, are you talking about it in terms of the best  
02:15:27 12 practice and what is required by the Walgreens policy?

02:15:29 13 A Yes.

02:15:29 14 Q All right. If you'd take a look at page 4 of the 2012  
02:15:36 15 good faith dispensing policy.

02:15:38 16 Do you see the section with the heading "Refusal to  
02:15:42 17 dispense"?

02:15:45 18 A Yes.

02:15:46 19 Q It says, "If the prescriber informs the pharmacist  
02:15:53 20 that a prescription for a controlled substance is valid but  
02:15:57 21 the pharmacist determines that the elements of good faith  
02:15:59 22 dispensing are not present, the pharmacist has a  
02:16:02 23 responsibility to refuse to dispense."

02:16:04 24 Did I read that correctly?

02:16:06 25 A Yes.

02:16:06 1 Q We've seen similar language, not exactly like this, in  
02:16:11 2 early policies; would you agree to that?

02:16:13 3 A Yes.

02:16:13 4 Q Is the obligation to refuse a prescription that does  
02:16:19 5 not meet the elements of good faith or that has red flags  
02:16:23 6 that cannot be resolved, the obligation to refuse that  
02:16:27 7 prescription, is that in Walgreens' good faith dispensing  
02:16:31 8 policy today?

02:16:31 9 A Yes.

02:16:32 10 Q Has it always been part of Walgreens' good faith  
02:16:35 11 dispensing?

02:16:35 12 A Yes.

02:16:35 13 Q If you'll take a look at page 6 of the 2012 policy.

02:16:48 14 Do you see the summary of good faith dispensing  
02:16:54 15 procedures by role and responsibility?

02:16:55 16 A Yes.

02:16:56 17 Q Does this -- what is this?

02:17:00 18 A It's just another way to display the responsibility of  
02:17:06 19 each employee back in the pharmacy, whether it be a  
02:17:12 20 technician or a pharmacist.

02:17:13 21 Q Were these steps that either the pharmacy tech or the  
02:17:16 22 pharmacist was taking even before the steps were laid out  
02:17:21 23 like this in a flowchart in the policy?

02:17:24 24 A Yes.

02:17:24 25 Q Why did you decide to include this in the 2012 policy?

02:17:27 1 **A** You know, we tried to -- you know, as things progress  
02:17:34 2 and change and you learn different things, you get feedback  
02:17:37 3 from the field and other places, we tried to shake things up  
02:17:41 4 a little bit to, you know, display them differently, find  
02:17:46 5 different ways. People learn in different ways, people  
02:17:49 6 remember in different ways. And this is an example where we  
02:17:52 7 just, you know, did it in like a flowchart rather than  
02:17:57 8 spelling it all out.

02:17:58 9 **Q** There are a number of steps in the filling of a  
02:18:03 10 prescription for controlled substances; would you agree with  
02:18:05 11 that?

02:18:05 12 **A** Yes.

02:18:06 13 **Q** Are all of the steps laid out in this flowchart or is  
02:18:10 14 it just a summary?

02:18:10 15 **A** It's probably just a summary.

02:18:13 16 **Q** A number of the boxes say "shared responsibility," and  
02:18:20 17 then one of them says "ultimate responsibility."

02:18:23 18 What does that refer to?

02:18:24 19 **A** So everybody back in the pharmacy has a responsibility  
02:18:29 20 to ensure that a prescription is being dispensed in good  
02:18:33 21 faith. If the technician knows that the prescription is  
02:18:35 22 fraudulent, then they should say something to the  
02:18:38 23 pharmacist, you know, point it out.

02:18:39 24 But the ultimate responsibility for dispensing a  
02:18:43 25 controlled substance at Walgreens is the final check



02:18:46 1 pharmacist that puts the pills in the bottle before they  
02:18:50 2 dispense the prescription to the patient.

02:18:53 3 **Q** There are a number of -- well, it looks like to me but  
02:18:57 4 tell me if I'm wrong, it looks like there are a number of  
02:19:01 5 steps along in the process where someone, either a tech or a  
02:19:06 6 pharmacist, can alert someone of questionable prescriptions.

02:19:10 7 Is that a fair summary or correct me if I'm wrong?

02:19:13 8 **A** Yes, that's correct.

02:19:13 9 **Q** I also see it looks like a number of checks,  
02:19:17 10 especially the last three steps in the process. There are a  
02:19:21 11 number of checks that repeat for each process.

02:19:23 12 Do you see that?

02:19:24 13 **A** Yes.

02:19:25 14 **Q** It says, "Check patient ID, verify DEA, use PDMP,  
02:19:31 15 review profile, evaluate GFD" -- that's good faith  
02:19:37 16 dispensing?

02:19:37 17 **A** Yes.

02:19:37 18 **Q** -- "document, pharmacist action, notify DEA, and  
02:19:46 19 Assign CAP."

02:19:50 20 Why are those checks listed at each phase of this  
02:19:53 21 process?

02:19:53 22 **A** They can be done at any of those phases, and so we  
02:19:57 23 were calling it out that, you know, if a DUR review  
02:20:01 24 pharmacist felt that additional action needed to be taken or  
02:20:05 25 they took additional action, we were expecting them to

02:20:09 1 document if they did.

02:20:12 2 But it didn't necessarily have to happen at that  
02:20:15 3 phase.

02:20:16 4 **Q** All right. I don't want to spend too much time on the  
02:20:19 5 steps.

02:20:21 6 Does greet and scan mean what it sounds like, you  
02:20:24 7 greet the patient and scan the prescription?

02:20:27 8 **A** Yes.

02:20:27 9 **Q** And the tech or the pharmacist could do that?

02:20:28 10 **A** Yes.

02:20:29 11 **Q** Data entry, again, is that just what it sounds like?

02:20:33 12 **A** Yes.

02:20:34 13 **Q** We've talked about data review and DUR. Is that the  
02:20:37 14 phase of the filling process when somebody checks for  
02:20:42 15 drug-drug interactions and maybe does other things as well?

02:20:44 16 **A** Yes.

02:20:45 17 **Q** What is product review?

02:20:47 18 **A** Product review is ensuring that the right pill is in  
02:20:51 19 the right bottle for the right patient based on the  
02:20:54 20 prescription that was written.

02:20:56 21 **Q** What is consultation?

02:20:58 22 **A** So consultation is a conversation that the pharmacist  
02:21:03 23 would have with the patient or the caregiver about that  
02:21:06 24 specific prescription.

02:21:07 25 **Q** And for each of these steps it says "tech or RPH, for

02:21:14 1 pharmacist, or it just says pharmacist or RPH?

02:21:17 2 **A** Correct.

02:21:17 3 **Q** Are some of these steps steps that they technician can  
02:21:20 4 do and some only a pharmacist accounted?

02:21:23 5 **A** Correct.

02:21:23 6 **Q** Which of the steps in the filling process does a  
02:21:26 7 pharmacist have to do?

02:21:28 8 **A** The pharmacist must do the data DUR review, they must  
02:21:34 9 do the final product check, and they must be -- they must be  
02:21:42 10 the person that has the conversation with the patient or the  
02:21:46 11 caregiver.

02:21:47 12 However, an intern under the supervision of a  
02:21:51 13 pharmacist might also do consultation.

02:21:54 14 **Q** Does this flowchart mean to suggest that several techs  
02:21:59 15 and several pharmacists will be involved in filling every  
02:22:02 16 prescription?

02:22:02 17 **A** It could mean that.

02:22:04 18 **Q** But it doesn't necessarily mean that?

02:22:05 19 **A** Correct.

02:22:05 20 **Q** Could it all be the same pharmacist?

02:22:07 21 **A** In some cases.

02:22:13 22 **Q** I did like for you to pull out of the your stack one  
02:22:16 23 of the documents that the plaintiffs' lawyer asked you  
02:22:19 24 about. It's Plaintiffs' Exhibit 25631. It's an October  
02:22:23 25 2012 e-mail with a Controlled Substance Action Plan attached

02:22:29 1 to it.

02:22:40 2 This is what the first page of it looks like. I've  
02:22:43 3 got it up on the screen.

02:22:44 4 **A** Yes.

02:22:45 5 **Q** And just to orient you, Ms. Polster, the policy we  
02:22:48 6 were just looking at was from June of 2012.

02:22:50 7 Do you recall that?

02:22:51 8 **A** Yes.

02:22:51 9 **Q** This e-mail and attachment that the plaintiffs' lawyer  
02:22:54 10 showed you is dated October 2012.

02:22:56 11 Do you see that?

02:22:56 12 **A** Yes.

02:22:57 13 **Q** Would you agree with me -- first, before I ask you  
02:23:00 14 this question, I'll ask you just to flip through Plaintiffs'  
02:23:06 15 25631 to refamiliarize yourself with it.

02:23:08 16 **A** Yes.

02:23:09 17 **Q** Would you agree with me that the October 2012  
02:23:13 18 presentation is very similar to a June 2012 presentation  
02:23:19 19 that is behind your Tab 5 in your binder as Exhibit 15314?

02:23:36 20 **A** Yes.

02:23:36 21 **Q** So turning back to the one I've got on the screen from  
02:23:39 22 October, who were you giving -- or who was supposed to  
02:23:41 23 receive the presentation from October of 2012?

02:23:46 24 **A** This was for -- this was intended for market leaders.  
02:23:52 25 It was sort of a train the trainer or for them to understand

02:24:02 1 everything around good faith dispensing and the changes and  
02:24:05 2 updates in the policy.

02:24:08 3 **Q** And then with respect to the June 2012 version of this  
02:24:12 4 presentation that is behind Tab 5, who was supposed to  
02:24:15 5 receive that one? Was it the same type of people or a  
02:24:20 6 different group?

02:24:21 7 **A** Correct, the same.

02:24:22 8 **Q** Was it for the same purpose?

02:24:24 9 **A** Yeah, so, you know, Walgreens is a very large company,  
02:24:28 10 and we do use a train the trainer type of training that goes  
02:24:34 11 down, so it would go to different levels of field leaders  
02:24:39 12 down to district managers who then would ensure that their  
02:24:45 13 stores were trained appropriately, their pharmacists were  
02:24:48 14 trained appropriately.

02:24:51 15 **Q** All right. I'll turn to I believe this is page 7. It  
02:24:56 16 says 6 on the slide, but it's the seventh page in the  
02:24:58 17 document.

02:24:59 18 Are these validation -- and I'm looking at the one  
02:25:02 19 that was from October of 2012 now.

02:25:04 20 Are these validation procedures for good faith  
02:25:07 21 dispensing that are included in the train the trainer  
02:25:10 22 presentation from October 2012 the same procedures we walked  
02:25:14 23 through in the June 2012 policy?

02:25:16 24 **A** Yes.

02:25:16 25 **Q** And then if you turn to the next page, do you see the

02:25:22 1 one that says, "Everyone plays a role in the good faith  
02:25:25 2 dispensing process"?

02:25:26 3 **A** Yes.

02:25:26 4 **Q** Does this walk through the -- it looks different, but  
02:25:31 5 does this walk through the same set of steps for filling a  
02:25:34 6 controlled substance prescription that we saw in the 2012  
02:25:37 7 policy?

02:25:37 8 **A** Yes.

02:25:37 9 **Q** And are these bullets that are underneath each of  
02:25:41 10 these steps taken from the Walgreens good faith dispensing  
02:25:45 11 policy, this is what the policy says you're supposed to do?

02:25:48 12 **A** Yes.

02:25:49 13 **Q** Whether it's with respect to reviewing the PDMP --  
02:25:52 14 that's something that the Walgreens policy requires you to  
02:25:55 15 do, correct?

02:25:55 16 **A** Yeah, based on the state regulations, yes.

02:26:00 17 **Q** Well, even if it's not required by stay law, this  
02:26:05 18 policy requires pharmacists to check the PDMP if it's  
02:26:08 19 appropriate to do so?

02:26:08 20 **A** Yes.

02:26:09 21 **Q** Is the same true with respect to the bullet that says  
02:26:14 22 document information that's coming from the Walgreens  
02:26:16 23 policy?

02:26:16 24 **A** Yes.

02:26:17 25 **Q** Okay. All right. I'd like you to take out another

02:26:28 1 one of the exhibits that the plaintiffs' lawyer asked you  
02:26:32 2 about. This one is Plaintiffs' Exhibit 20639. I believe  
02:26:37 3 it's one of your PowerPoint presentations.

02:26:52 4 **A** Okay.

02:26:53 5 **Q** Is that what I've got up on the screen?

02:26:57 6 **A** Yes.

02:26:59 7 **Q** What is your best guess as to what the date is  
02:27:02 8 supposed to be on this presentation?

02:27:03 9 **A** January of 2013.

02:27:05 10 **Q** Okay. Is this another presentation that you and your  
02:27:09 11 team used to train field leaders?

02:27:12 12 **A** Yes.

02:27:13 13 **Q** Who was the audience for this presentation?

02:27:14 14 **A** The market leadership, they were -- they're the level  
02:27:20 15 above the district managers in our organization.

02:27:23 16 **Q** All right. If you would, please, I'm going to take  
02:27:26 17 you, and if you can turn yourself too, to page 11, which is  
02:27:31 18 a slide that the plaintiffs' lawyer asked you about.

02:27:34 19 THE COURT: Is there a document number on --  
02:27:36 20 it's 20639?

02:27:38 21 MS. SWIFT: 20639.

02:27:40 22 THE COURT: Thank you.

02:27:42 23 MS. SWIFT: Do you have it, Your Honor? We  
02:27:44 24 can give you a copy.

02:27:45 25 THE COURT: Yes, I have it.

02:27:48 1 Q And I'm going to call out the speaker notes and ask  
02:27:51 2 you about them.

02:27:52 3 Do you recall being asked about the speaker notes with  
02:27:56 4 the plaintiffs' lawyer?

02:27:57 5 A Yes.

02:27:57 6 Q And you were not given an opportunity to explain what  
02:28:02 7 you meant by this last note here about good customers  
02:28:14 8 impacting other business.

02:28:15 9 What did you mean by this speaker note?

02:28:18 10 A So the intent of this was explaining to the market  
02:28:22 11 leaders to explain to the district leaders that the  
02:28:28 12 obligation of a pharmacist is to make sure that they're  
02:28:32 13 filling prescriptions on good faith and the prescriptions  
02:28:35 14 that they are filling are legitimate with, you know -- good  
02:28:39 15 customers would be somebody who's bringing in a legitimate  
02:28:42 16 prescription that was written in good faith.

02:28:45 17 We wanted them to understand that, listen, if your  
02:28:50 18 pharmacists are refusing prescriptions that -- for  
02:28:54 19 prescriptions that they don't feel that they meet good  
02:28:57 20 faith, either the prescriber isn't writing it in good faith  
02:29:00 21 or there are questions about the patient, that, you know,  
02:29:04 22 that's okay. We're supporting our pharmacy -- our  
02:29:08 23 pharmacists in making those decisions, and that the field  
02:29:11 24 leaders need to understand that that's okay, because we  
02:29:15 25 don't want them filling prescriptions that they feel they



02:29:18 1 should not be filling.

02:29:19 2 **Q** All right. I'm going to take you now to page 19 of  
02:29:24 3 the slide deck.

02:29:25 4 Do you remember being asked questions about this slide  
02:29:27 5 that shows the linear regression analysis for the order  
02:29:33 6 monitoring system that's in place at Walgreens?

02:29:34 7 **A** Yes.

02:29:35 8 **Q** You said in your notes on this slide that "outliers  
02:29:42 9 will see a decrease or in some cases will stop shipping  
02:29:46 10 certain controlled substances to them."

02:29:49 11 The plaintiffs' lawyer didn't give you an opportunity  
02:29:51 12 to explain what you meant there either. What did you mean?

02:29:54 13 **A** So the way the ordering system works is that we  
02:29:58 14 compare the ordering of bottles of controlled substances  
02:30:05 15 from store to store based on peer group. Meaning that a  
02:30:10 16 store that is doing 200 prescriptions a day would be  
02:30:13 17 compared to other stores doing 200 prescriptions a day  
02:30:16 18 across the country.

02:30:17 19 A store that is dispensing a larger quantity of  
02:30:25 20 prescriptions total may need more controlled substances  
02:30:27 21 because they have more business.

02:30:30 22 So what this was intended was that we're putting  
02:30:37 23 ceilings in place, and in some cases a store that -- a  
02:30:47 24 store's order might hit up against that ceiling even though  
02:30:50 25 they were compared to another store. Maybe they tried to

02:30:55 1 order or maybe the ordering system was trying to bring in  
02:30:59 2 more bottles of that particular medication based on the  
02:31:02 3 business that they were seeing over the rolling six-week  
02:31:05 4 period of time.

02:31:07 5 What I was explaining to the field leaderships in this  
02:31:12 6 slide was that we're going to have new steps and we're going  
02:31:16 7 to require those stores to fill out an order monitoring form  
02:31:22 8 or an ordering form that if they needed more bottles of a  
02:31:28 9 certain medication, then what the ordering system was doing  
02:31:33 10 for them, they needed to document that on the order form,  
02:31:38 11 that they were an outlier, the ceiling was going to stop  
02:31:41 12 that ordering system from ordering extra tablets. And if  
02:31:47 13 the store needed it, they had to show me or my team why they  
02:31:50 14 would need extra tablets, what was changing in their  
02:31:53 15 business or what their business needed to explain why they  
02:31:57 16 needed those additional tablets in their store brought in.

02:32:01 17 **Q** All right. Now, I want to switch gears a little bit.  
02:32:07 18 We talked a bunch about a number of good faith dispensing  
02:32:10 19 policies, but you said at the outset there are two policies  
02:32:16 20 related to the dispensing of controlled substances.

02:32:17 21 Is the second one the target drug good faith  
02:32:21 22 dispensing policy?

02:32:21 23 **A** Yes.

02:32:23 24 MS. SWIFT: I'm happy to keep going, Your  
02:32:25 25 Honor, it's only 2:30, but I just wanted to check in.

02:32:27 1 THE COURT: Keep going.

02:32:28 2 Q Okay. All right. We'll do the target drug good faith  
02:32:28 3 dispensing policy.

02:32:29 4 Take a look, if you would, Ms. Polster, at the  
02:32:31 5 document behind Tab 8 of your binder.

02:32:37 6 A Okay.

02:32:37 7 Q Do you recognize that document as a target drug good  
02:32:44 8 faith dispensing checklist?

02:32:44 9 A Yes.

02:32:44 10 Q I'm not certain this is exactly the same one that the  
02:32:49 11 plaintiffs' lawyer showed you earlier today, but I'll ask  
02:32:51 12 you the same question he did.

02:32:53 13 Is this an earlier version or a later version?

02:32:55 14 A This looks like a later version.

02:32:58 15 Q Why did you create -- well, first of all, let me take  
02:33:04 16 a step back.

02:33:04 17 Who created the target drug checklist at Walgreens?

02:33:07 18 A The working group that would include my team.

02:33:10 19 Q Why was it created?

02:33:11 20 A We created it so that we would ensure consistency from  
02:33:19 21 our stores, that we would give a process for stores to  
02:33:24 22 follow -- or pharmacists to follow as they're filling  
02:33:28 23 prescriptions, and additionally to point out to technicians  
02:33:34 24 that they also had a responsibility to ensure that the  
02:33:38 25 prescription was filled in good faith.

02:33:39 1 Q Did the DEA ask Walgreens to create the target drug  
02:33:47 2 good faith dispensing policy and checklist?

02:33:48 3 A No.

02:33:48 4 Q Has DEA ever asked you to change the target drug  
02:33:53 5 checklist?

02:33:54 6 MR. WEINBERGER: Objection. By the  
02:33:58 7 plaintiffs' lawyer.

02:33:59 8 MS. SWIFT: I'll withdraw it.

02:34:03 9 Q Do you have an understanding, Ms. Polster, whether --  
02:34:07 10 an understanding as a pharmacist whether a checklist like  
02:34:10 11 this is required by law?

02:34:11 12 A It is not.

02:34:12 13 Q All right. We've seen the steps of this checklist  
02:34:28 14 with another witness, so I'm not going to walk through all  
02:34:30 15 of them and repeat all of that. But I do have a few  
02:34:32 16 specific questions.

02:34:34 17 Step 7, I'll call it out for you, says, "If available  
02:34:45 18 in your state, PDMP has been reviewed. Prescription is  
02:34:48 19 being filled on time."

02:34:53 20 Is that same requirement part of the good faith  
02:34:55 21 dispensing policy as well?

02:34:56 22 A Yes.

02:34:56 23 Q Then I'll call out for you step number 10.

02:35:10 24 Do you see that it says, "Per CDC recommendation,  
02:35:15 25 naloxone was offered to the patient in case of an emergency

02:35:18 1 for prescriptions that are greater than or equal to 50  
02:35:23 2 morphine milligram equivalents, or MME"?

02:35:28 3 Do you see that?

02:35:28 4 **A** Yes.

02:35:28 5 **Q** What is the CDC recommendation that's being referred  
02:35:31 6 to there?

02:35:32 7 **A** The CDC had put out a safety recommendation, and I  
02:35:39 8 might not be using the right terminology, but that's the way  
02:35:43 9 I view it, a safety recommendation that if a patient is  
02:35:46 10 taking a high-dose opioid, they would be at risk for  
02:35:50 11 respiratory arrest, that they would take -- if they  
02:35:55 12 accidentally took too much. And naloxone should be offered  
02:35:59 13 to the patient to let them know that that's something that  
02:36:01 14 they could keep on hand because naloxone is an antidote for  
02:36:08 15 an opioid overdose and could help save the patient's life.

02:36:14 16 **Q** Is information like the CDC recommendation that you  
02:36:17 17 just described, is that publicly available information?

02:36:19 18 **A** Yes.

02:36:19 19 **Q** Is it information that you also provide to your  
02:36:22 20 pharmacists?

02:36:25 21 **A** Yes.

02:36:32 22 **Q** I think you just explained what naloxone is. I think  
02:36:35 23 you called it an antidote for an overdose. Is that a fair  
02:36:39 24 description?

02:36:39 25 **A** Yes.

02:36:39 1 Q Is naloxone sometimes also called Narcan?

02:36:42 2 A It is.

02:36:43 3 Q Is Narcan the brand name or is it the other way  
02:36:45 4 around?

02:36:46 5 A Narcan is the brand name.

02:36:47 6 Q The jury has heard a little bit about Narcan. Do you  
02:36:50 7 know whether police officers typically carry Narcan with  
02:36:52 8 them in case they encounter somebody having an overdosed?

02:36:56 9 A I have heard that.

02:36:57 10 Q So the CDC guideline to offer naloxone or Narcan to  
02:37:02 11 patients with prescriptions greater than or equal to 350  
02:37:07 12 MME, is that something that Walgreens pharmacists do?

02:37:14 13 A Yes, they do let the patient know that it's available  
02:37:16 14 and they can sell that prescription with that -- or they  
02:37:20 15 could sell that prescription item without a patient-specific  
02:37:24 16 prescription based on the new regulations that happen for  
02:37:27 17 this.

02:37:27 18 Q Does Narcan or naloxone save lives, in your  
02:37:32 19 experience?

02:37:32 20 A Yes.

02:37:32 21 Q In your view, is the target drug checklist  
02:37:37 22 perfunctory?

02:37:38 23 A No.

02:37:38 24 Q Why not?

02:37:41 25 A I just -- I've never thought of it as perfunctory. I

02:37:48 1 think the intent of it was to give the pharmacists a  
02:37:52 2 framework to work by, but not intended to just check, check,  
02:37:58 3 check, check, check, and it's okay to go. They have to  
02:38:01 4 think through it for that specific patient and that specific  
02:38:04 5 prescription.

02:38:06 6 **Q** All right. I'd like you to find in your stack of  
02:38:07 7 exhibits from the plaintiffs' lawyers the one about the BCI  
02:38:14 8 presentation.

02:38:15 9 Do you remember that one with the big red arrow?

02:38:20 10 **A** I do. Do you have the number?

02:38:21 11 **Q** I do. It's P-15085.

02:38:28 12 **A** Okay.

02:38:32 13 **Q** Do you remember giving us questions about this  
02:38:34 14 presentation during the cross-examination?

02:38:38 15 **A** Yes.

02:38:40 16 **Q** And just to reorient the jury, this is the  
02:38:44 17 presentation -- go to the first page of it -- "It's a good  
02:38:49 18 faith dispensing DM webinar."

02:38:51 19 Do you see that?

02:38:51 20 **A** Yes.

02:38:52 21 **Q** This is a presentation about the BCI audit that  
02:38:54 22 Walgreens loss prevention conducted on a sample of 2400  
02:39:00 23 stores to see if they were complying with the target drug  
02:39:04 24 checklist policy. Do you remember that?

02:39:06 25 **A** Yes.

02:39:06 1 Q Was this a presentation that your team sent out to the  
02:39:12 2 field leaders to inform them about the results of that  
02:39:16 3 audit?

02:39:16 4 A Yes.

02:39:16 5 Q Why did you do that?

02:39:17 6 A Well, because it wasn't a hundred percent. We wanted  
02:39:22 7 all of our field leaders to know that, you know, we want  
02:39:28 8 them to be looking for and checking against our policies and  
02:39:37 9 understanding what the good faith dispensing and the target  
02:39:43 10 good faith dispensing policies were, what the -- what things  
02:39:45 11 that they should be looking for when they go into the stores  
02:39:48 12 doing supervision. You know, it was another train the  
02:39:56 13 trainer type webinar.

02:39:57 14 Q And just to get it back in your mind, there's the big  
02:40:03 15 red arrow. It says results were unfavorable.

02:40:07 16 And then on the next page you talked about this 59.5  
02:40:13 17 percent compliance rate for the "number of stores that  
02:40:16 18 correctly had a completed target drug checklist attached to  
02:40:21 19 the filled TD prescription hard copies."

02:40:24 20 Do you remember that?

02:40:25 21 A Yes.

02:40:25 22 Q And then just to get the other piece of this from this  
02:40:27 23 deck, the next page, what it says is number of stores that  
02:40:33 24 correctly had completed checklist attached to the refused TD  
02:40:40 25 prescription hard copies," and it was a 75.7 percent



02:40:45 1 compliance rate.

02:40:47 2 Do you see that?

02:40:48 3 **A** Yes.

02:40:48 4 **Q** So for this one, and then we're going to go back and  
02:40:50 5 I'm going to ask you some questions about the 59.5 percent  
02:40:55 6 well.

02:40:55 7 But while we're here, what is being measured here, is  
02:40:59 8 it whether the prescription was refused or is it whether  
02:41:02 9 there was a checklist attached to the refusal?

02:41:04 10 **A** Whether there was a checklist attached to the refusal.

02:41:10 11 **Q** All right. Now I'm going to put a different document  
02:41:12 12 on the screen, and it's Tab 9 in your binder.

02:41:19 13 Do you recognize that document? It's Exhibit 2606.

02:41:23 14 **A** Yes.

02:41:25 15 **Q** What is it?

02:41:25 16 **A** It's the results of this BCI walk that loss prevention  
02:41:34 17 did.

02:41:34 18 **Q** You say it's the results. It says it's an executive  
02:41:38 19 summary at the top.

02:41:39 20 Do you see that?

02:41:39 21 **A** Yes.

02:41:39 22 **Q** Is this document one that walks through in a more  
02:41:43 23 detailed way the very specific granular results of the BCI  
02:41:49 24 audit that you were reporting on to your team?

02:41:51 25 **A** Yes.

02:41:51 1 Q Not to your team. You were reporting on to the field?

02:41:57 2 A Yes.

02:41:58 3 Q I'll first direct your attention to -- and you can see  
02:42:01 4 just walking through it there are questions and then it  
02:42:04 5 shows what the results were for the different buckets of  
02:42:07 6 stores.

02:42:07 7 Is that a fair characterization?

02:42:09 8 A Yes.

02:42:09 9 Q I'm going to focus on the ones that you put in the  
02:42:14 10 presentation.

02:42:14 11 So the first one I'm going to focus on is question  
02:42:17 12 number 5.

02:42:18 13 Do you see that at the bottom of the first page?

02:42:20 14 A Yes.

02:42:20 15 Q The question was: "When target drug prescriptions are  
02:42:25 16 dispensed, pharmacy team members are responsible for  
02:42:28 17 completing the target drug good faith dispensing TD GFD  
02:42:33 18 checklist." And then it says, "Number of filled target drug  
02:42:38 19 prescriptions that did not have a completed TD GFD checklist  
02:42:43 20 attached."

02:42:44 21 Do you see that?

02:42:45 22 A Yes.

02:42:45 23 Q All right. Did these results that we see down here,  
02:42:56 24 we see at the very bottom 11 or more equals 10 stores or 0.4  
02:43:03 25 percent.

02:43:04 1 Do you see that?

02:43:04 2 **A** Yes.

02:43:04 3 **Q** Does that mean that only 10 stores out of the 2400

02:43:09 4 that were audited had filled more than 10 target drug

02:43:12 5 prescriptions without a completed checklist attached to it?

02:43:15 6 **A** Yes.

02:43:15 7 **Q** And that was just 0.4 percent of the audited stores?

02:43:20 8 **A** Yes.

02:43:20 9 **Q** And then right above that do you see where it says, "6

02:43:27 10 to 10 equals 133 stores or 5.5 percent"?

02:43:33 11 **A** Yes.

02:43:33 12 **Q** Does that mean that another 5.5 percent of the audited

02:43:39 13 stores had between six and ten checklists missing?

02:43:46 14 **A** Yes.

02:43:47 15 **Q** And if you add the 5.5 percent to the .4 percent, you

02:43:53 16 get 5.9 percent? Am I doing that math correctly?

02:43:57 17 **A** Yes.

02:43:57 18 **Q** Does that mean that 94.1 percent of the audited stores

02:44:03 19 had five or fewer checklists missing when loss prevention

02:44:08 20 conducted this audit?

02:44:08 21 **A** Yes.

02:44:10 22 **Q** That sounds pretty good. Were you happy with these

02:44:15 23 results?

02:44:15 24 **A** I would have liked to see a hundred percent

02:44:19 25 compliance, and, you know, that was part of the reason why

02:44:22 1 we, you know, shared all that information to field  
02:44:28 2 leadership, that we expect a hundred percent compliance,  
02:44:34 3 but, you know, I mean, 90 percent was very good, but I would  
02:44:37 4 have liked to have seen a hundred percent.

02:44:39 5 **Q** The result that you put into your presentation to the  
02:44:43 6 field, it didn't say great job, 94.1 percent; is that a fair  
02:44:48 7 statement?

02:44:48 8 **A** Fair.

02:44:49 9 **Q** Now I'd like to ask you about -- and is that  
02:44:55 10 because -- why didn't you say great job, 94.1 percent?

02:44:58 11 **A** Because there were instances where they did not follow  
02:45:02 12 the policy, and we want them to follow the policy.

02:45:05 13 **Q** You want them to be perfect?

02:45:06 14 **A** Yes.

02:45:06 15 **Q** All right. Now, if you'd turn to the next page, I  
02:45:12 16 want to ask you about question number 7. It says, "If the  
02:45:21 17 pharmacist determines a TD prescription does not meet GFD  
02:45:26 18 requirements, a copy of the refused prescription and  
02:45:28 19 completed TD GFD checklist must be in the refusal file.  
02:45:33 20 After reviewing the refusal California file folder for  
02:45:37 21 calendar 2015, how many refused TD prescriptions lacked a  
02:45:41 22 completed TD GFD checklist?"

02:45:45 23 Do you see that?

02:45:46 24 **A** Yes.

02:45:46 25 **Q** And do you see that the answer is zero for 1820

02:45:56 1 stores?

02:45:56 2 **A** Yes.

02:45:56 3 **Q** So those are the stores that weren't missing any  
02:46:01 4 checklists?

02:46:03 5 **A** Yeah, based on the number 7 above, yes.

02:46:09 6 **Q** Okay. All right. And we saw how you reported this to  
02:46:14 7 your team to the field in the presentation that the  
02:46:19 8 plaintiffs' lawyer showed you earlier today; is that fair?

02:46:25 9 **A** Yes.

02:46:25 10 **Q** I think I can do this one quickly before our break.

02:46:54 11 Take a look, if you would, Ms. Polster, at Tab 12, and  
02:46:58 12 let me know if you recognize that document.

02:46:59 13 **A** Yes.

02:46:59 14 **Q** What is the document behind Tab 12?

02:47:01 15 **A** It is our 2020 good faith dispensing policy.

02:47:07 16 **Q** And is that what I have on the screen?

02:47:09 17 **A** Yes.

02:47:09 18 **Q** This is the last one of these I'm going to do.

02:47:11 19 Would you agree with me that the 2020 good faith  
02:47:14 20 dispensing policy is even more detailed and it's even longer  
02:47:19 21 than the previous policies we've looked at?

02:47:20 22 **A** Yes.

02:47:21 23 **Q** Is it fair to say that Walgreens has continued to  
02:47:24 24 enhance its good faith dispensing policy to identify red  
02:47:30 25 flags of potential diversion throughout the time you've been

02:47:32 1 at Walgreens?

02:47:33 2 **A** Yes.

02:47:33 3 **Q** Does Walgreens train its pharmacists at least annually  
02:47:37 4 on good faith dispensing today?

02:47:39 5 **A** Yes.

02:47:39 6 **Q** All right. You have behind you, I believe they're in  
02:47:45 7 a Redweld, a group of other good faith dispensing policies  
02:47:50 8 and target drug good faith dispensing policies, but what I'd  
02:47:54 9 like for you to do is look at the documents in that Redweld  
02:47:57 10 and tell me if that's what those are.

02:48:13 11 **A** Yes, they're the paper copies of the good faith  
02:48:19 12 dispensing policies.

02:48:19 13 **Q** Okay.

02:48:25 14 MR. LANIER: Your Honor, I think I'm going to  
02:48:26 15 move to a longer new section. This might be a good time to  
02:48:29 16 take our afternoon break.

02:48:30 17 THE COURT: Very good. Then we'll take our  
02:48:32 18 mid afternoon break. Usual admonitions. 15 minutes, then  
02:48:36 19 we'll pick up with more of Ms. Polster's testimony.

02:49:15 20 (Recess taken at 2:49 p.m.)

03:06:50 21 (The jury is present at 3:06 p.m.)

03:06:51 22 THE COURT: Please be seated.

03:06:52 23 Ms. Polster, you're still under oath.

03:06:54 24 Ms. Swift, you may continue.

03:06:56 25 MS. SWIFT: Thank you, Your Honor.

03:06:57 1 Mr. Pitts, if I could trouble you for the ELMO, I'd  
03:07:02 2 appreciate it.

03:07:04 3 Welcome back, Ms. Polster.

03:07:05 4 THE WITNESS: Thank you.

03:07:07 5 MS. SWIFT: Ladies and gentlemen of the jury.

03:07:08 6 BY MS. SWIFT:

03:07:08 7 **Q** I want to go back to something I was asking you about  
03:07:11 8 before the break just to make sure it's really clear. Let's  
03:07:14 9 see if we can do this.

03:07:16 10 Do you remember this page of the train the trainer  
03:07:20 11 presentation on compliance with the target drug checklist?

03:07:25 12 **A** Yes.

03:07:26 13 **Q** And it shows a 59.5 percent compliance rate.

03:07:29 14 Was that perfect compliance?

03:07:34 15 **A** Yeah, 59.5 percent of the stores had perfect  
03:07:38 16 compliance.

03:07:39 17 **Q** So just I want to make really sure that that's clear  
03:07:43 18 what that means. And I'm going to try to show the -- so  
03:07:47 19 this is the other document about the BCI, something we are  
03:07:50 20 looking at before.

03:07:50 21 Do you remember this one?

03:07:51 22 **A** Yes.

03:07:51 23 **Q** And I've circled the number or the question that  
03:07:54 24 relates to this particular question in your train the  
03:07:56 25 trainer presentation, and you can see the 59.5 percent right

03:08:00 1 there.

03:08:00 2 And that corresponds to this 59.5 percent compliance  
03:08:05 3 rate right here, correct?

03:08:07 4 **A** Correct.

03:08:07 5 **Q** Is what that is saying that those stores, that 59.5  
03:08:15 6 percent, had every single checklist that they were supposed  
03:08:18 7 to have completed?

03:08:21 8 **A** Correct.

03:08:21 9 **Q** The 94.1 percent that we were talking about before, do  
03:08:24 10 you remember that number?

03:08:25 11 **A** Yes.

03:08:26 12 **Q** Is that the number of stores that had five checklists  
03:08:31 13 missing or even fewer than that?

03:08:33 14 **A** Yes.

03:08:33 15 **Q** So is it fair to say for 94.1 percent of the stores,  
03:08:46 16 they were doing a pretty good job?

03:08:47 17 **A** Yes.

03:08:47 18 **Q** All right. The other number we talked about from this  
03:08:52 19 presentation that went out to your field leaders was the  
03:08:58 20 75.7.

03:08:59 21 Do you see that?

03:09:00 22 **A** Yes.

03:09:00 23 **Q** This is the number of stores that correctly had  
03:09:03 24 completed target drug good faith checklists attached to the  
03:09:07 25 refusals.



03:09:08 1 Is that right?

03:09:09 2 **A** Correct.

03:09:09 3 **Q** And just to go back to it in the summary that gives  
03:09:13 4 the details of the results so we can see it together -- I  
03:09:17 5 don't know if I can put it on the screen together.

03:09:29 6 It's 1820 stores, does that correspond to this number  
03:09:33 7 as well?

03:09:33 8 **A** Yes, but let me read that question above it.

03:09:45 9 Yeah, that's correct.

03:09:46 10 **Q** So the question number 7 is asking, "If the pharmacist  
03:09:50 11 determines a target drug prescription does not meet GFD  
03:09:54 12 requirements, a copy of the refused prescription and  
03:09:56 13 completed checklist -- completed TD GFD checklist must be in  
03:10:04 14 the refusal file. After reviewing the refusal California  
03:10:08 15 file folder for calendar 2015, how many refused  
03:10:12 16 prescriptions lacked a completed TD GFD checklist?"

03:10:18 17 Did I get that right?

03:10:19 18 **A** Yes.

03:10:20 19 **Q** And the answer for that was that 1820 stores weren't  
03:10:23 20 missing a single checklist attached to a refusal, correct?

03:10:27 21 **A** Correct.

03:10:39 22 **Q** Ms. Polster, have you had an opportunity to see  
03:10:41 23 refused prescriptions at Walgreens stores over your career?

03:10:45 24 **A** Yes.

03:10:45 25 **Q** Are there a number of places at Walgreens, whether in

03:10:54 1 the -- like, physically in the store or in the computer  
03:10:56 2 system where a pharmacist can make a note that a  
03:11:01 3 prescription has been refused?

03:11:02 4 **A** Yes.

03:11:02 5 **Q** Is one place in a physical folder in the store?

03:11:09 6 **A** Yes.

03:11:09 7 **Q** It's like a manila folder that folds over the  
03:11:14 8 prescriptions?

03:11:14 9 **A** Yes.

03:11:14 10 **Q** And the pharmacists maintain the hard copy refused  
03:11:19 11 prescriptions in that folder in the store, there's that one  
03:11:24 12 place they can go to look if they want to see whether or not  
03:11:27 13 a prescription has been refused?

03:11:28 14 **A** Yes, they maintain a copy of the hard copy.

03:11:31 15 **Q** Are there places in the computer system where a  
03:11:34 16 pharmacist can document that a prescription for a patient  
03:11:36 17 has been refused?

03:11:37 18 **A** Yes.

03:11:37 19 **Q** Is one of those places in the patient comment field?

03:11:42 20 **A** Yes.

03:11:42 21 **Q** Are there other places within the computer system  
03:11:46 22 where a patient can make a note about that?

03:11:48 23 **A** Where a pharmacist could make a note about the  
03:11:51 24 patient, yes.

03:11:51 25 **Q** And about whether a prescription has been refused?

03:11:54 1 **A** Yes.

03:11:54 2 **Q** Can pharmacists also put other information that they  
03:12:01 3 deem relevant and important into the patient comment field?

03:12:04 4 **A** Yes.

03:12:04 5 **Q** Can pharmacists put notes on things they deem relevant  
03:12:09 6 to a particular prescription in other fields in the  
03:12:14 7 Walgreens computer system?

03:12:15 8 **A** Yes.

03:12:16 9 **Q** Is there a field called the annotation field where you  
03:12:18 10 can do that?

03:12:19 11 **A** Yes.

03:12:19 12 **Q** Are there other -- is there a comment field for DUR or  
03:12:28 13 drug utilization review comments where a pharmacist can do  
03:12:33 14 that?

03:12:33 15 MR. WEINBERGER: Objection. I mean, I --

03:12:34 16 THE COURT: Sustained.

03:12:37 17 **Q** All right. Well, you said a moment ago that refusals  
03:12:41 18 are maintained in hard copy at the store, right?

03:12:44 19 **A** Yes.

03:12:44 20 **Q** Because of the different places where a pharmacist can  
03:12:51 21 maintain information about a refused prescription, is it a  
03:12:56 22 concern to you if a pharmacist deems it appropriate to  
03:13:01 23 delete portions of a comment field about a refusal?

03:13:05 24 MR. WEINBERGER: Objection.

03:13:06 25 THE COURT: Overruled.

03:13:14 1 **A** It would be a concern for me if the most recent  
03:13:19 2 prescription that is in front of the pharmacist at the time  
03:13:22 3 of refusing, if that information is not in the field where  
03:13:30 4 another pharmacist could see that that prescription was  
03:13:34 5 indeed refused, that would be a concern.

03:13:36 6 **Q** Do you have any reason to believe that that is  
03:13:39 7 something that happens on any kind of regular basis at  
03:13:44 8 Walgreens?

03:13:45 9 MR. WEINBERGER: Objection.

03:13:45 10 THE COURT: Sustained.

03:13:52 11 **Q** I think you just said if the most recent information  
03:13:54 12 was removed from a comment field, that might be a concern.

03:13:58 13 Would it be a concern to you if older information is  
03:14:02 14 removed from a comment field?

03:14:04 15 MR. WEINBERGER: Objection.

03:14:11 16 THE COURT: Sustained.

03:14:14 17 **Q** All right. I'd like you to take a look at the  
03:14:16 18 document behind -- well, before I get to that, have you had  
03:14:20 19 an opportunity to review the refusal files for the Walgreens  
03:14:25 20 stores in Lake and Trumbull County?

03:14:27 21 **A** Yes.

03:14:27 22 **Q** Do you have an understanding of how many stores are in  
03:14:31 23 Lake and Trumbull County, roughly speaking?

03:14:33 24 **A** I'm guessing maybe 12. 12, I think.

03:14:39 25 **Q** And if you'll turn to Tab 6 in your binder, let me

03:14:46 1 know if you recognize what that is.

03:14:53 2 **A** Yes, I -- it's a copy of a target drug good faith  
03:15:00 3 dispensing checklist for a refused prescription.

03:15:02 4 **Q** Have you seen this refused prescription and the  
03:15:06 5 attached checklist before?

03:15:07 6 **A** Yes.

03:15:07 7 **Q** Can you tell whether the refusal and the attached  
03:15:14 8 checklist, are those from a store in Ohio?

03:15:18 9 **A** Yes.

03:15:18 10 **Q** How can you tell that?

03:15:19 11 **A** It has the Ohio prescription drug monitoring report,  
03:15:26 12 and it has store numbers on here somewhere.

03:15:37 13 **Q** Did you say it has the store numbers on there?

03:15:40 14 **A** Yeah.

03:15:40 15 **Q** Where does it have the store number?

03:15:42 16 **A** Well, maybe it doesn't have an exact store number.  
03:15:58 17 I'm sorry.

03:15:59 18 **Q** Take a look at the third page at the bottom.

03:16:01 19 Do you see a store number and an address?

03:16:04 20 **A** On page 3?

03:16:05 21 **Q** Yes. It says 2604.899 at the bottom of it.

03:16:19 22 **A** Okay.

03:16:19 23 **Q** Do you see that?

03:16:20 24 **A** Yeah.

03:16:21 25 **Q** What's the address of that Walgreens?

03:16:22 1 **A** I want to make sure that I'm looking at the right line  
03:16:32 2 here.

03:16:33 3 **Q** It's the -- do you see the heading towards the bottom  
03:16:36 4 of the page that says, "Pharmacies that dispensed  
03:16:41 5 prescriptions listed"?

03:16:42 6 **A** Yes.

03:16:42 7 **Q** And the bottom one listed is W-G5549?

03:16:45 8 **A** Yes.

03:16:45 9 **Q** What's the address of that Walgreens store?

03:16:47 10 **A** 804 West Market Street, Warren, Ohio.

03:16:52 11 **Q** Is the document that I've got on the screen the same  
03:17:14 12 one that you're looking at, Ms. Polster?

03:17:16 13 **A** Yes.

03:17:16 14 **Q** And you recognize this as a Walgreens refusal to fill?

03:17:22 15 **A** Yes.

03:17:22 16 **Q** How can you tell this prescription has been refused?

03:17:25 17 **A** Down at the bottom where it has pharmacist's  
03:17:32 18 signature, there's a box for refused and their signature.

03:17:35 19 **Q** Is that what you're talking about right there, that  
03:17:37 20 little box that says "refused"?

03:17:40 21 **A** Yes.

03:17:41 22 **Q** All right. I'd like to direct your attention to the  
03:17:50 23 notes at the bottom.

03:17:55 24 Can you read that for us, please?

03:17:57 25 **A** "Per prescription drug monitoring program, the patient

03:18:02 1 is getting 360 methadone at Overholt's Pharmacy. Both are  
03:18:09 2 short-acting narcotics, and I don't feel comfortable filling  
03:18:12 3 this prescription while X is getting the methadone.

03:18:21 4 **Q** All right. And that's a note that is at the bottom of  
03:18:24 5 the page of the checklist.

03:18:26 6 Is the checklist also filled out?

03:18:28 7 **A** Yes.

03:18:29 8 **Q** And what do you see on the second and third pages of  
03:18:34 9 this document?

03:18:35 10 **A** This is a copy of the Ohio OARRS prescription drug  
03:18:43 11 monitoring program for this patient.

03:18:50 12 **Q** Do you see that on pages 2 and 3 of this refusal, the  
03:18:53 13 OARRS report, most of the prescriptions listed are from a  
03:18:59 14 pharmacy called Overholt's?

03:19:04 15 **A** Yes.

03:19:06 16 MR. WEINBERGER: Objection, Your Honor.

03:19:07 17 THE COURT: Overruled.

03:19:08 18 MR. WEINBERGER: Can we be heard at side bar?

03:19:11 19 (At side bar at 3:19 p.m.)

03:19:34 20 MR. WEINBERGER: Your Honor, you previously  
03:19:37 21 ruled that the PDMP report in the Winland investigation  
03:19:44 22 was -- could not be used in terms of individual  
03:19:46 23 prescriptions, so consistent with that ruling, where they're  
03:19:54 24 going into an individual script to defend the case --

03:19:59 25 MS. SWIFT: Your Honor, we disclosed this a

03:20:01 1 year ago, and we have always made it very clear that we were  
03:20:04 2 going to defend our case prescription by prescription if  
03:20:07 3 opposed, and you've always said that we were entitled to do  
03:20:12 4 that.

03:20:12 5 MR. WEINBERGER: Well, then we should have  
03:20:14 6 been entitled to go into the Winland PDMP report in detail.

03:20:19 7 MS. SWIFT: That was a very different  
03:20:20 8 situation. That stuff had not been disclosed. We had a  
03:20:23 9 specific interrogatory, Number 25, on it. It was not  
03:20:26 10 disclosed in response to that interrogatory. We asked for  
03:20:28 11 it and plaintiffs did not get it to us.

03:20:29 12 I'll withdraw the PDMP details.

03:20:35 13 MR. LANIER: Judge --

03:20:36 14 THE COURT: Look, I mean, if the defendants  
03:20:38 15 are going to defend this case prescription by prescription  
03:20:42 16 on redirect, I'll let the plaintiffs bring in prescriptions,  
03:20:45 17 all right?

03:20:46 18 I'm not limiting how anyone defends the case, but if  
03:20:49 19 you defend it this way, they've got rebuttal and they can  
03:20:51 20 start bringing in individual prescriptions, Ms. Swift. So  
03:20:55 21 you --

03:20:56 22 MS. SWIFT: I'll withdraw it, Your Honor.

03:20:57 23 THE COURT: I'm not telling you to withdraw  
03:20:58 24 it.

03:20:58 25 MR. LANIER: And that's a little late after



03:21:00 1 she's already displayed it. I'd like the record to reflect  
03:21:02 2 she displayed it for a minute and a half in front of the  
03:21:05 3 jury and questioned on it.

03:21:07 4 THE COURT: The point is they can bring out  
03:21:09 5 the fact that sometimes Walgreens refuses prescriptions,  
03:21:13 6 okay, because there's been a lot of testimony on it. I  
03:21:16 7 think it's relevant for that basis. But if we're going to  
03:21:18 8 start going into individual ones, then the plaintiffs can  
03:21:21 9 bring in individual prescriptions in rebuttal.

03:21:32 10 (In open court at 3:21 p.m.)

03:21:44 11 BY MS. SWIFT:

03:21:45 12 Q Ms. Polster, have you had an opportunity -- I believe  
03:21:47 13 you said you did already, but I'll ask it again just to make  
03:21:51 14 sure.

03:21:51 15 Have you had an opportunity to review other refusals  
03:21:54 16 from the Walgreens stores in Lake and Trumbull County?

03:21:57 17 A Yes.

03:21:57 18 Q And I believe you have a box behind you. Can you  
03:21:59 19 please, if you would, take a look at that box and let me  
03:22:02 20 know if those are the refusals from the Lake and Trumbull  
03:22:06 21 County stores that you have reviewed?

03:22:07 22 MR. LANIER: Could we have a copy of those?

03:22:09 23 MS. SWIFT: I believe so, yes, sir.

03:22:41 24 A There's a lot of papers in here. I do recognize some  
03:22:45 25 of the store numbers, and they are copies of refusals.

03:22:54 1 Q All right. New topic.

03:22:56 2 What is IntercomPlus?

03:23:01 3 A It's our prescription dispensing computer system.

03:23:04 4 Q How long has IntercomPlus been in place at Walgreens?

03:23:07 5 A We've had a computer system since 1984, and the newest  
03:23:15 6 version, called IntercomPlus, started in 1997 with various  
03:23:22 7 enhancements over the years.

03:23:23 8 Q Does IntercomPlus -- so just to make sure this is  
03:23:27 9 clear, explain for the jury, if you would, please, how a  
03:23:34 10 pharmacist at Walgreens uses IntercomPlus?

03:23:38 11 A So IntercomPlus stores the information for a specific  
03:23:42 12 prescription that is filled, and so all the data entry for  
03:23:48 13 the prescription, an image of the prescription for that  
03:23:51 14 patient, it has a record of drug interactions, it has a  
03:23:59 15 record of if the prescription was paid for by cash or  
03:24:03 16 insurance. It basically has all the information stored in  
03:24:10 17 it for all filled prescriptions, and any annotations or  
03:24:16 18 notes, allergies, health conditions that are relevant for a  
03:24:20 19 patient.

03:24:20 20 Q If you see a pharmacist in a pharmacy, like when you  
03:24:25 21 go into the Walgreens you see a pharmacist behind the  
03:24:28 22 counter working on a computer, are they working on  
03:24:30 23 IntercomPlus?

03:24:31 24 A Yes.

03:24:31 25 Q Okay. Does IntercomPlus help pharmacists at Walgreens

03:24:36 1 identify concerns with prescriptions?

03:24:38 2 **A** Yes.

03:24:39 3 MR. WEINBERGER: Objection.

03:24:40 4 **Q** Can you --

03:24:41 5 THE COURT: Hold it.

03:24:44 6 Overruled.

03:24:45 7 **Q** Can you provide an example?

03:24:47 8 **A** Yes. A drug-drug interaction would be alerted the  
03:24:56 9 pharmacist. A drug allergy or a drug health condition could  
03:25:00 10 be alerted the pharmacist.

03:25:01 11 **Q** Is there a large amount of documented information in  
03:25:04 12 IntercomPlus for every prescription that is filled at  
03:25:07 13 Walgreens?

03:25:08 14 **A** Yes.

03:25:08 15 MR. WEINBERGER: Objection.

03:25:09 16 THE COURT: Overruled.

03:25:09 17 **Q** Does IntercomPlus include the store number and ZIP  
03:25:15 18 code of the pharmacy?

03:25:15 19 **A** Yes.

03:25:15 20 **Q** Does IntercomPlus include the prescription number and  
03:25:19 21 what date it's being filled?

03:25:22 22 **A** Yes.

03:25:23 23 **Q** Does IntercomPlus show the pharmacist whether a  
03:25:26 24 prescription is new or a refill?

03:25:29 25 **A** Yes.

03:25:29 1 Q Does IntercomPlus include a product description for  
03:25:34 2 the medication?

03:25:34 3 A Yes.

03:25:35 4 Q Does IntercomPlus include the quantity dispensed?

03:25:39 5 A Yes.

03:25:39 6 Q Does IntercomPlus include how many days of supply a  
03:25:43 7 prescription is for?

03:25:44 8 A Yes.

03:25:44 9 Q I think you already said this, but does IntercomPlus  
03:25:49 10 indicate whether the patient paid for a prescription with  
03:25:53 11 cash or insurance?

03:25:54 12 A Yes.

03:25:54 13 Q Is all of that available to the pharmacist at the  
03:26:00 14 counter when they are filling a prescription?

03:26:02 15 A Yes.

03:26:02 16 Q Does IntercomPlus include the doctor's name?

03:26:05 17 A Yes.

03:26:05 18 Q Does it include the doctor's address?

03:26:09 19 A Yes.

03:26:09 20 Q Does it include the doctor's DEA number?

03:26:11 21 A Yes.

03:26:11 22 Q What is the doctor's DEA number? Why is that person?

03:26:14 23 A The DEA will assign a DEA number to a specific  
03:26:22 24 practitioner based on the schedule of prescriptions that a  
03:26:29 25 doctor is allowed to prescribe. So a doctor applies for a

03:26:33 1 DEA number, and the DEA would grant the privilege of writing  
03:26:40 2 a prescription for a controlled substance based on that  
03:26:45 3 application.

03:26:45 4 **Q** If a doctor is writing a prescription in Florida but  
03:26:51 5 the patient fills it in Ohio, account pharmacist see that in  
03:26:56 6 IntercomPlus?

03:26:56 7 **A** Yes.

03:26:56 8 **Q** Can the pharmacist see the patient's birth date, the  
03:27:01 9 patient's sex, the patient's address, and the patient's ZIP  
03:27:04 10 code in IntercomPlus?

03:27:05 11 **A** Yes.

03:27:05 12 **Q** Is all of that information provided to Walgreens  
03:27:12 13 pharmacists to use while they're deciding whether to fill a  
03:27:16 14 prescription?

03:27:16 15 **A** Yes.

03:27:16 16 **Q** And I think you said this already before, but just to  
03:27:24 17 make sure, we talked about the hard copy target drug  
03:27:28 18 checklists where a pharmacist can make a note.

03:27:30 19 Are there many places in IntercomPlus where a  
03:27:33 20 pharmacist can make a note as well?

03:27:34 21 **A** Yes.

03:27:35 22 **Q** When a pharmacist is filling a prescription at the  
03:27:53 23 counter, can the pharmacist see earlier prescriptions that  
03:27:57 24 that patient who is in front of them has filled at  
03:27:59 25 Walgreens?

03:27:59 1 **A** Yes.

03:28:00 2 **Q** How far back would say pharmacist see if looking at a  
03:28:07 3 patient's prescription history, how far back in time?

03:28:10 4 **A** 18 months.

03:28:11 5 **Q** Does a pharmacist typically need to look back any  
03:28:15 6 further than that?

03:28:15 7 **A** Not generally.

03:28:16 8 **Q** Can they if they need to?

03:28:18 9 **A** Yes, they could request information from the custodian  
03:28:21 10 of records.

03:28:23 11 **Q** All right. You testified earlier today that for a  
03:28:29 12 period of time the target drug checklist was in paper.

03:28:33 13 Is the target drug checklist that the pharmacist fills  
03:28:36 14 out for target drugs, is it still in paper today or is it  
03:28:41 15 electronic or how is that done today?

03:28:42 16 **A** We use an electronic format.

03:28:46 17 **Q** And explain to the jury what that means when for the  
03:28:50 18 pharmacist who's standing at the counter.

03:28:53 19 **A** So IntercomPlus will trigger alerts or questions that  
03:28:59 20 the pharmacist has to resolve based on the prescription that  
03:29:04 21 they're filling and answer accordingly that they resolved  
03:29:11 22 those steps while they're filling the prescription.

03:29:14 23 **Q** And just to make sure it's clear, several of the  
03:29:17 24 alerts that are in IntercomPlus today have been in  
03:29:22 25 IntercomPlus since long before the target drug checklist

03:29:27 1 became electronic; is that a true statement?

03:29:31 2 **A** Yes.

03:29:31 3 **Q** What did the electronic version of the checklist add  
03:29:37 4 to IntercomPlus? What's done electronically now in terms of  
03:29:42 5 the alerts that pop up?

03:29:43 6 **A** It automatically calculates the MME of the  
03:29:49 7 prescription. It helps calculate the distance so the  
03:29:57 8 pharmacist doesn't have to look it up.

03:30:01 9 **Q** Does it flag early refills?

03:30:03 10 **A** It does flag early refills.

03:30:05 11 **Q** Does the electronic version of the checklist force the  
03:30:09 12 pharmacist to complete the checklist before the prescription  
03:30:12 13 can be filled?

03:30:12 14 **A** Yes.

03:30:12 15 **Q** Remind the jury, if you would, how long the checklist  
03:30:18 16 has been electronic.

03:30:19 17 **A** The end of 2019.

03:30:23 18 **Q** Is it fair to say that the pharmacist could do all of  
03:30:26 19 the things that are now electronic, they could do those  
03:30:29 20 things manually before?

03:30:31 21 **A** Yes.

03:30:31 22 **Q** Does the checklist make it easier for them to do that?

03:30:34 23 **A** Yes.

03:30:34 24 **Q** Does it make it faster?

03:30:40 25 **A** Yes.

03:30:40 1 Q Does Walgreens make use of the prescription data that  
03:31:02 2 it has to prevent the diversion of opioids?

03:31:09 3 A Sorry, can you clarify that for me?

03:31:11 4 Q I'd be happy to. We'll come back to that.

03:31:15 5 Before I come back to that though, does Walgreens  
03:31:19 6 provide other tools aside from IntercomPlus, like databases  
03:31:24 7 of clinical information for pharmacists to use?

03:31:27 8 A Yes.

03:31:27 9 Q What kind of databases does Walgreens provide to its  
03:31:30 10 pharmacists?

03:31:30 11 A They have access to the CDC and the DEA websites, they  
03:31:36 12 have access to clinical references such as clinical  
03:31:41 13 pharmacology, Lexicomp, and Drugs Facts and Comparisons that  
03:31:47 14 they can look up specific information on a drug that could  
03:31:52 15 go all the way down to the detail of the mechanism of action  
03:31:55 16 or how long the half-life is or whatever they would need  
03:31:59 17 extra in filling the prescription.

03:32:01 18 Q Are those paid services that Walgreens provides for  
03:32:04 19 its pharmacists?

03:32:06 20 A The drug references are, yes.

03:32:09 21 Q Does Walgreens also have an internal complaint hotline  
03:32:13 22 for employees?

03:32:15 23 A Yes, we do.

03:32:17 24 Q You were asked questions yesterday about a pharmacist  
03:32:19 25 in Long Beach, California, who made some pretty serious



03:32:26 1 complaints about the filling of prescriptions in his store.

03:32:32 2 Do you remember those questions?

03:32:33 3 **A** Yes.

03:32:36 4 **Q** He complained about the way two store managers had

03:32:39 5 handled a prescription he thought should be refused.

03:32:41 6 Do you remember that?

03:32:41 7 **A** Yes.

03:32:41 8 **Q** I'd like you to take a look at the document lined Tab

03:32:44 9 19 of your binder.

03:32:55 10 **A** Okay.

03:32:58 11 **Q** Do you recognize this document as the investigation

03:33:00 12 file for that pharmacist?

03:33:02 13 **A** I do.

03:33:02 14 **Q** Have you had a chance to review the investigation

03:33:09 15 file?

03:33:09 16 **A** Yes, at a high level.

03:33:12 17 **Q** And you can see on the first page -- well, let me just

03:33:16 18 put it on the screen so we can follow along.

03:33:19 19 You can see on the first page of the investigation

03:33:30 20 file in the third bullet it says this case is closed?

03:33:36 21 **A** Yes.

03:33:36 22 **Q** And just below that it says that the status is

03:33:39 23 resolved.

03:33:39 24 Do you see that?

03:33:40 25 **A** Yes.

03:33:41 1 Q And it says the issue type is an unfair job action.

03:33:50 2 Do you see that?

03:33:54 3 A Yes.

03:33:54 4 Q And I won't show it on the screen, but can you see on  
03:33:57 5 the third page of the investigation file the pharmacist's  
03:34:02 6 name is there and it says that he works at a store in Long  
03:34:07 7 Beach.

03:34:07 8 Do you see that?

03:34:08 9 A Yes.

03:34:08 10 Q Is this the same pharmacist who made the complaint  
03:34:11 11 that you were just asked about yesterday?

03:34:12 12 A Yes.

03:34:13 13 Q Did you have an opportunity to review this  
03:34:15 14 investigation file and determine whether the complaint was  
03:34:20 15 addressed thoroughly?

03:34:21 16 A Yes.

03:34:21 17 Q And what did you conclude about that?

03:34:23 18 A I felt it was thoroughly investigated from my point of  
03:34:31 19 view.

03:34:31 20 Q Who handles complaints like this at Walgreens?

03:34:34 21 A Our compliance department and our employee relations  
03:34:38 22 department, and in some cases our HR department.

03:34:44 23 Q Is it typical for a complaint like this one for  
03:34:47 24 multiple departments to get involved?

03:34:48 25 A Yes.

03:34:48 1 Q Is it typical for a complaint like this one for the  
03:34:52 2 investigation to take, you know, several months?

03:34:56 3 A Yes.

03:34:56 4 Q Do you know from your review of the investigation file  
03:35:01 5 whether the investigators in this case took witness  
03:35:05 6 statements?

03:35:06 7 A Yes.

03:35:10 8 Q And did they?

03:35:10 9 A Yes.

03:35:10 10 Q Do you know from your review of this investigation  
03:35:12 11 file whether the investigation led to retraining in the  
03:35:18 12 local area where the two store managers worked?

03:35:23 13 A Yes.

03:35:25 14 Q When a complaint like this is made by an employee at  
03:35:29 15 Walgreens, does Walgreens take it very seriously?

03:35:32 16 A Yes.

03:35:32 17 Q Do you believe based on your review of the  
03:35:36 18 investigation file that Walgreens did take this complaint  
03:35:39 19 very seriously?

03:35:40 20 A Yes.

03:35:40 21 Q If you look at page 9 of the investigation file. I'll  
03:36:24 22 put it on the screen over here.

03:36:25 23 Do you see the description that reads that "JSB," I  
03:36:44 24 believe you can tell from the investigation file that that's  
03:36:45 25 Janeen Burrel?

03:36:47 1 **A** Yes.

03:36:47 2 **Q** It says, "JSB participated in a conference call with  
03:36:50 3 Scott Jonkman, Eric Stahmann, and Lisa Domenick."

03:36:54 4 Do you know who those people are?

03:36:55 5 **A** I know who Scott Jonkman is and Eric Stahmann. I am  
03:36:59 6 not familiar with Lisa Domenick or Janeen Burrel.

03:37:02 7 **Q** Who is Scott Jonkman?

03:37:04 8 **A** Scott Jonkman works in our compliance investigation  
03:37:07 9 group.

03:37:10 10 **Q** Do you see that it says, "Mr. Jonkman wanted to  
03:37:13 11 clarify that he believes the managers' handling of the issue  
03:37:15 12 to be an isolated incident and not a systemic matter"?

03:37:19 13 **A** I do.

03:37:19 14 **Q** Do you remember questions that you were asked earlier,  
03:37:41 15 I believe today and yesterday, about something called a  
03:37:46 16 nondispensing report?

03:37:47 17 **A** Yes.

03:37:48 18 **Q** I'd like you to pull out the document that went along  
03:37:50 19 with those questions. It's Plaintiffs' Exhibit 19607.

03:38:05 20 I've got it on the screen if that's easier. It's up  
03:38:08 21 to you if you want to find the hard copy.

03:38:10 22 **A** I found it.

03:38:11 23 **Q** Do you see that I've got the e-mail on the screen from  
03:38:15 24 you to -- there's Eric Stahmann again.

03:38:20 25 He's on your team; is that right?

03:38:21 1 **A** Yes.

03:38:21 2 **Q** Chris Dymon and Patty Daugherty, are they both on your  
03:38:27 3 team as well?

03:38:28 4 **A** Yes.

03:38:28 5 **Q** And so is Ed Bratton?

03:38:41 6 **A** Yes.

03:38:41 7 **Q** All right. The subject line is "Nondispensing  
03:38:41 8 report."

03:38:41 9 Do you see that?

03:38:41 10 **A** Yes.

03:38:41 11 **Q** Your e-mail to your team about this report said, "The  
03:38:48 12 intent is to give visibility into whether or not we have  
03:38:52 13 pharmacists that just won't fill a controlled med or maybe  
03:38:59 14 are selective about filling them."

03:39:01 15 What did you mean by that?

03:39:03 16 **A** So we wanted to make sure when a pharmacist is  
03:39:12 17 presented with a prescription, that they don't just pick and  
03:39:15 18 choose which ones they decide to fill because it's easy.  
03:39:20 19 That it's a, you know, noncontrolled prescription, you know,  
03:39:23 20 it's fine, I'm going to fill it. You know, that -- you  
03:39:26 21 know, if a controlled substance prescription comes in and  
03:39:30 22 the patient's in front of them, that they should take that  
03:39:34 23 situation and that patient and the prescription as it comes.

03:39:38 24 And they can't just willy-nilly not fill the  
03:39:43 25 prescription because they don't want to take the steps to do

03:39:45 1 their due diligence.

03:39:47 2 **Q** I'd like you to explain to the jury, because this is  
03:39:49 3 important, were you trying to pressure pharmacists to fill  
03:39:54 4 more controlled substance prescriptions?

03:39:57 5 **A** No.

03:39:57 6 **Q** Who received the nondispensing report at Walgreens?

03:40:01 7 **A** Just field leadership, above district managers.

03:40:04 8 **Q** Why did field leadership above district managers  
03:40:08 9 receive this report and not other people?

03:40:11 10 **A** It was -- well, lower than that didn't need it, and it  
03:40:17 11 was meant as an all-encompassing report looking at many  
03:40:23 12 different things around controlled substances for the stores  
03:40:27 13 in their market.

03:40:27 14 **Q** Did the field leaders, were they supposed to give this  
03:40:32 15 nondispensing report to the pharmacists and tell them you  
03:40:35 16 need to fill more prescriptions?

03:40:37 17 **A** No, that was not the intent.

03:40:38 18 **Q** Did the field leaders provide the pharmacists with  
03:40:41 19 this report at all?

03:40:44 20 **A** No.

03:40:45 21 **Q** Is there anything inappropriate about having district  
03:40:52 22 managers or other field leaders coaching pharmacists on good  
03:40:57 23 faith dispensing?

03:40:57 24 **A** No.

03:40:57 25 **Q** And I'd like you to -- I'm sorry, I stepped on your

03:41:00 1 answer. Let me ask it again. I apologize.

03:41:02 2 Is there anything inappropriate about having district  
03:41:07 3 managers or other field leaders coaching pharmacists on good  
03:41:12 4 faith dispensing?

03:41:12 5 **A** No.

03:41:12 6 **Q** Even if they're not a pharmacist?

03:41:16 7 **A** Correct.

03:41:16 8 **Q** Why not?

03:41:17 9 **A** Well, when they're coaching around good faith  
03:41:20 10 dispensing, they're not questioning whether or not that  
03:41:22 11 pharmacist did or didn't fill the prescription. They're --  
03:41:28 12 in some cases they're coaching to understand why. In some  
03:41:31 13 cases a patient will complain if a pharmacist doesn't fill  
03:41:35 14 their prescription.

03:41:36 15 And in some cases, the district manager has to handle  
03:41:40 16 that complaint, and they may call or go into a store and get  
03:41:45 17 more details around it so that they can talk to the patient  
03:41:48 18 and let them know the reason behind why the prescription  
03:41:52 19 wasn't filled.

03:41:53 20 Sometimes it's remember we're asking you to follow a  
03:41:56 21 policy, we need you to fill out the target drug good faith  
03:42:02 22 dispensing checklist, did you know that that checklist was  
03:42:04 23 available, did you know that it's required. That would be  
03:42:08 24 something appropriate for the leader to follow up on.

03:42:12 25 **Q** So when you were asked questions about the Long Beach

03:42:16 1 pharmacist who complained that his store managers, the two  
03:42:20 2 store managers, were pressuring him, is that a totally  
03:42:26 3 different situation?

03:42:27 4 **A** Yes.

03:42:28 5 **Q** Why?

03:42:30 6 **A** Because our policy is very specific that we support  
03:42:44 7 our pharmacists when they refuse to fill a prescription. I  
03:42:47 8 was surprised and honestly, you know, concerned that we had  
03:42:52 9 store managers, particularly not even in that pharmacist's  
03:42:55 10 store, telling that pharmacist that he should or shouldn't  
03:43:00 11 fill a prescription.

03:43:01 12 **Q** Is that what you want to see from your store managers?

03:43:04 13 **A** No.

03:43:08 14 **Q** Is the nondispensing report that is referred to in  
03:43:11 15 this e-mail the only report that your team runs on  
03:43:14 16 pharmacists to make sure they're doing their jobs?

03:43:17 17 **A** No.

03:43:18 18 **Q** Does pharmaceutical integrity track the percentage of  
03:43:27 19 controlled substance prescriptions filled at each of its  
03:43:29 20 stores?

03:43:29 21 **A** Yes.

03:43:29 22 **Q** Did you look at those numbers for the Lake and  
03:43:32 23 Trumbull County stores?

03:43:33 24 **A** I did.

03:43:33 25 **Q** Take a look if you would, please, at the document



03:43:36 1 behind Tab 14 of your binder. This is Exhibit 2005.

03:43:43 2 **A** Okay.

03:43:43 3 **Q** And let me know if you recognize what that is.

03:43:45 4 **A** I do.

03:43:45 5 **Q** What is it?

03:43:46 6 **A** It is one of the reports that my team will run. I  
03:43:54 7 recognize some of the store -- the store numbers as being  
03:43:58 8 the stores you were referring to.

03:44:02 9 **Q** Does your team generate reports like this on a regular  
03:44:07 10 basis?

03:44:07 11 **A** Yes.

03:44:07 12 **Q** Do you know how far back they go?

03:44:08 13 **A** When my team was formed, we started doing this for my  
03:44:14 14 team. Now, I don't know if it was done prior to that, but  
03:44:18 15 my team began doing it when my team was formed, for me.

03:44:22 16 **Q** I'll walk you across the columns just so we can give  
03:44:25 17 the jury a sense of what's in this report.

03:44:29 18 The first column on the left says "Run date."

03:44:34 19 Is that the date the report was run?

03:44:36 20 **A** Yes. Well -- yes.

03:44:41 21 **Q** And you can see there's the same date many times in a  
03:44:43 22 row, and then you can see in the third column there are  
03:44:47 23 different store numbers there.

03:44:48 24 Do you see that?

03:44:48 25 **A** Yes.

03:44:49 1 Q And did you say you recognized some of those as the  
03:44:52 2 Trumbull and Lake County stores that you had been looking at  
03:44:56 3 information for?

03:44:56 4 A Yes.

03:44:56 5 Q I don't want to talk about all of these different  
03:44:59 6 columns, but I'd like to focus on the one that says Rx  
03:45:03 7 control percent.

03:45:03 8 What is that?

03:45:04 9 A It's the total percentage of controlled substance that  
03:45:08 10 that store dispensed during that time frame.

03:45:12 11 Q When you looked at this report for the Lake and  
03:45:17 12 Trumbull County stores, did you look to see whether any of  
03:45:20 13 the control percentages seemed out of the ordinary to you?

03:45:23 14 A Yes.

03:45:24 15 Q And what did you determine?

03:45:25 16 A I did not see anything out of the ordinary.

03:45:28 17 Q All right. It also shows a cash percentage.

03:45:34 18 Do you see that?

03:45:35 19 A Yes.

03:45:35 20 Q What does that mean?

03:45:37 21 A So the cash percent is the total number of controlled  
03:45:46 22 substance prescriptions that is -- that are paid for by cash  
03:45:50 23 at that location.

03:45:51 24 Q Okay. Does pharmaceutical integrity also run reports  
03:45:59 25 at a store level on prescriptions filled for combinations of

03:46:04 1 medications that might increase the risk to the patient?

03:46:07 2 **A** Yes.

03:46:07 3 **Q** What is the purpose of a report like that?

03:46:10 4 **A** So that report is a report that we give field leaders  
03:46:19 5 to on occasion when they go into the store, if there is one  
03:46:27 6 of those reports for that specific store, gives them an  
03:46:31 7 example to look to make sure that all the elements of good  
03:46:36 8 faith dispensing per our policy were followed.

03:46:38 9 **Q** So is the idea that the report includes information  
03:46:41 10 about individual prescriptions?

03:46:42 11 **A** Yes.

03:46:42 12 **Q** Is the point of the report to say, hey, these  
03:46:47 13 prescriptions should not have been filled?

03:46:48 14 **A** No.

03:46:48 15 **Q** What is the point when the field leader goes into the  
03:46:51 16 store with that kind of a report?

03:46:53 17 **A** To look to make sure that all elements of good faith  
03:46:57 18 dispensing did indeed happen, that documentation took place,  
03:47:01 19 that the pharmacists who filled it understood what they were  
03:47:05 20 doing and using caution in filling those prescriptions.

03:47:11 21 **Q** Does pharmaceutical integrity also run other types of  
03:47:14 22 reports called coaching opportunities reports?

03:47:16 23 **A** Yes.

03:47:17 24 **Q** If you'll take a look behind Tab 16, I'll ask you to  
03:47:20 25 let me know if that's a coaching opportunities report.

03:47:26 1 A Yes, it is.

03:47:26 2 Q Can you tell if it's a coaching opportunities report  
03:47:31 3 for the stores in Lake and Trumbull County?

03:47:34 4 A Yes, it is.

03:47:34 5 Q Is that what I've got up on the screen there?

03:47:43 6 A Yeah.

03:47:43 7 Q Many tiny rows?

03:47:48 8 A Yeah.

03:47:48 9 Q I'll just call out the column headers again. You can  
03:47:51 10 see along the left side again we've got the store number, is  
03:47:53 11 that what it is?

03:47:54 12 A Yes.

03:47:54 13 Q You can see Store Number 5549. We've seen that one  
03:47:57 14 before, do you remember that?

03:48:00 15 A Yes.

03:48:00 16 Q And then it's got some information about the drug.

03:48:07 17 And then over to the right so that you can get an  
03:48:09 18 idea, it has more information about the individual  
03:48:12 19 prescription, like the day's supply and the dose and some  
03:48:17 20 other information. Then there's a column that says  
03:48:20 21 "reason."

03:48:20 22 What is that?

03:48:21 23 A So the reason is why it triggered on this report.

03:48:26 24 Q And again, what is the purpose of running this kind of  
03:48:29 25 a report, this coaching opportunities report?

03:48:31 1 **A** To give the field leaders exact examples to -- in the  
03:48:37 2 course of their supervision visits to pull those examples  
03:48:40 3 and ensure that the appropriate steps were taken in the good  
03:48:46 4 faith dispensing process.

03:48:46 5 **Q** Is the purpose of giving the field leaders a report  
03:48:50 6 like this to say, hey, these prescriptions should not have  
03:48:53 7 been filled?

03:48:54 8 **A** No.

03:48:54 9 **Q** Do the pharmacists see these reports?

03:48:57 10 **A** No.

03:48:57 11 **Q** Would you agree with me that some of the reason codes  
03:49:05 12 for the prescriptions on this coaching opportunities report  
03:49:07 13 are similar to some of the red flags we've seen in the good  
03:49:14 14 faith dispensing policy?

03:49:14 15 **A** Yes.

03:49:15 16 **Q** All right. You've said that the field leaders receive  
03:49:18 17 reports like this. Does that include district managers?

03:49:25 18 **A** I do believe that a district manager would see this.

03:49:27 19 **Q** Would a healthcare supervisor see a report like this?

03:49:30 20 **A** Yes.

03:49:30 21 **Q** Would district managers -- well, just before I move  
03:49:35 22 on, would a pharmacy manager who is in the store see a  
03:49:39 23 report like this?

03:49:40 24 **A** Only if their field leader showed it to them.

03:49:43 25 **Q** Why would a field leader show a pharmacy manager a

03:49:49 1 report like this? Explain it to the jury if you would.

03:49:51 2 **A** So if -- when the field leader is going into the store  
03:49:54 3 on the supervision visit and they are collecting for good  
03:49:58 4 faith dispensing and ensuring that the stores are doing what  
03:50:00 5 they're supposed to be doing with their documentation or  
03:50:04 6 just their overall processes around good faith dispensing,  
03:50:09 7 the field leader would access the report at the store, and  
03:50:13 8 they would then go to the hard copy files and pull that hard  
03:50:17 9 copy or also they could look in the computer system for  
03:50:22 10 specific notes around that prescription.

03:50:25 11 **Q** What does the field leader do if they don't find what  
03:50:29 12 they're supposed to find when they do that?

03:50:30 13 **A** Yeah, so it's intended to coach the employee on the  
03:50:36 14 proper documentation for that prescription.

03:50:41 15 **Q** Do -- when field leaders are having these coaching  
03:50:48 16 conversations, is that something that sometimes happens  
03:50:50 17 during something called a store walk?

03:50:52 18 **A** It could, yes.

03:51:00 19 **Q** You were asked questions earlier today about the  
03:51:03 20 personal notes of a Walgreens district manager named  
03:51:07 21 Brian Joyce.

03:51:07 22 Do you remember those questions?

03:51:08 23 **A** Yes.

03:51:11 24 **Q** You were asked questions about Mr. Joyce's personal  
03:51:13 25 notes on his visits to pharmacies in his district.

03:51:16 1 Do you remember that?

03:51:17 2 **A** Yes.

03:51:17 3 **Q** In addition to whatever personal notes Mr. Joyce may  
03:51:23 4 have chosen to make, are there other ways that the field  
03:51:25 5 leaders document store walk visits?

03:51:33 6 **A** I don't know that off the top of my head.

03:51:35 7 **Q** Are you familiar with something called a compliance  
03:51:37 8 checklist?

03:51:39 9 **A** Yes.

03:51:39 10 **Q** What is a compliance checklist?

03:51:41 11 **A** A compliance checklist, we have a couple different  
03:51:47 12 ones that field leaders do and also the HCS and the DM could  
03:51:53 13 do that together. And it is a series of questions that are  
03:51:59 14 used as a tool to evaluate the overall compliance of the  
03:52:08 15 store, front of store and pharmacy.

03:52:10 16 **Q** Are the compliance checklist visits, is that  
03:52:14 17 sometimes -- is that separate from a store walk or is it  
03:52:16 18 something that's sometimes done in conjunction or how does  
03:52:18 19 that work?

03:52:18 20 **A** It's separate.

03:52:19 21 **Q** Are there visits that the field leader does in  
03:52:24 22 conjunction with the compliance checklists, are those  
03:52:28 23 documented through a centralized system?

03:52:31 24 **A** Yes.

03:52:31 25 **Q** Is there a questionnaire with questions about the

03:52:33 1 front end of the store and also questions about the pharmacy  
03:52:37 2 that are supposed to be filled out?

03:52:39 3 **A** Yes.

03:52:44 4 **Q** Do the questions on those questionnaires change from  
03:52:47 5 month to month?

03:52:47 6 **A** Yes.

03:52:48 7 **Q** Do they sometimes include questions about good faith  
03:52:53 8 dispensing?

03:52:53 9 **A** Yes.

03:52:53 10 **Q** Do they sometimes include questions about whether the  
03:52:58 11 pharmacy -- whether the pharmacists are properly completing  
03:53:04 12 target drug checklists?

03:53:05 13 **A** Yes.

03:53:09 14 **Q** Do the compliance walk documents that you're  
03:53:14 15 discussing sometimes include questions where instructions to  
03:53:18 16 go find five target drug prescriptions in the store files  
03:53:24 17 and determine whether the checklist has been properly  
03:53:27 18 completed?

03:53:27 19 **A** Yes.

03:53:27 20 **Q** And if the field leader who goes into the store and  
03:53:37 21 completes that questionnaire and answers those questions  
03:53:40 22 doesn't find what they're supposed to find, what are they  
03:53:42 23 supposed to do?

03:53:42 24 **A** So they are supposed to speak with the pharmacists  
03:53:49 25 that are on duty in addition to the pharmacy manager to let



03:53:52 1 them know that they didn't find it and coach them to remind  
03:53:56 2 them of the policy and what the policy entails.

03:54:00 3 **Q** Now, I believe you testified that you know  
03:54:04 4 Brian Joyce; is that right?

03:54:04 5 **A** I do.

03:54:05 6 **Q** If you would, please, take a look at the document  
03:54:07 7 behind Tab 17 of your binder.

03:54:11 8 **A** Okay.

03:54:11 9 **Q** It's Exhibit 2625.

03:54:20 10 And do you see at the beginning of the e-mail chain  
03:54:22 11 that you're copied on it?

03:54:23 12 **A** Yes.

03:54:26 13 **Q** I'll call that out.

03:54:42 14 It's an e-mail from an Rx Integrity e-mail address.

03:54:46 15 Can you explain to the jury what that means?

03:54:49 16 **A** So the Rx Integrity e-mail address is an e-mail  
03:54:56 17 address that's used by my team, so all the members of my  
03:55:00 18 team have access to this e-mail address. And that's what it  
03:55:06 19 is.

03:55:06 20 **Q** The subject line is "Rx Integrity reports for the  
03:55:09 21 month of May now available."

03:55:12 22 Do you see that?

03:55:12 23 **A** Yes.

03:55:13 24 **Q** What is an Rx Integrity report, and specifically is  
03:55:17 25 that something that is the same as what we've been talking

03:55:19 1 about so far, is it something different?

03:55:22 2 **A** They would be the same, but there's more reports than  
03:55:25 3 what we talked to in there.

03:55:26 4 **Q** Got it.

03:55:27 5 And the message says, "Hello, this message is being  
03:55:32 6 sent to notify you that the Rx Integrity monthly reports are  
03:55:35 7 now available. You can access these reports by going to the  
03:55:39 8 following site," and then it provides a website -- or like a  
03:55:42 9 link to the website.

03:55:43 10 Do you see that?

03:55:44 11 **A** Yes.

03:55:44 12 **Q** And if we scroll up to see what happens next -- we  
03:55:54 13 need to go to the next page -- do you see, I think it's the  
03:56:05 14 second page, the e-mail from Zachary Leslie to Brian Joyce  
03:56:09 15 and another gentleman?

03:56:10 16 **A** Yes.

03:56:11 17 **Q** He says, "Beau and Brian, this is May's report, and as  
03:56:18 18 expected the same two stores are on this list for oxycodone.  
03:56:22 19 Have either of you received any feedback from these stores  
03:56:25 20 around dispensing habits, GFD policy execution, doctors  
03:56:29 21 prescribing more oxy, new pharmacists working at their  
03:56:33 22 locations, et cetera?"

03:56:38 23 And then he clips into his e-mail what looks to be  
03:56:41 24 part of an Excel report.

03:56:43 25 Is that correct?

03:56:43 1 **A** Yes.

03:56:43 2 **Q** Do you see where it says in what looks like the Excel  
03:56:49 3 portion, "Deterioration 500 plus"?

03:56:52 4 **A** Yes.

03:56:52 5 **Q** What does that mean? Well, actually, let me take a  
03:56:56 6 step back. I apologize.

03:56:57 7 Does the part of this e-mail that looks like it's  
03:57:00 8 clipped from an Excel spreadsheet, does that appear to you  
03:57:02 9 to be a portion of an Rx Integrity report?

03:57:05 10 **A** Yes.

03:57:05 11 **Q** How can you tell that?

03:57:06 12 **A** Well, we do have -- we do use that terminology, and  
03:57:16 13 we -- that's just a report that we would use.

03:57:18 14 **Q** What is deterioration 500 plus, what does that mean?

03:57:21 15 **A** So we track the number of controlled substances that  
03:57:29 16 are dispensed by stores, and we track the number of, like,  
03:57:34 17 oxycodone and hydromorphone and methadone that are tracked,  
03:57:38 18 and we rank the stores. We do not give the field leaders  
03:57:43 19 the number of where they sit for the chain for dispensing,  
03:57:49 20 but we will tell them if their store is starting to dispense  
03:57:53 21 more and they are moving up, so if, let's say, for example,  
03:57:57 22 we have -- well, we have, like, 9000 stores today, and if a  
03:58:02 23 store is ranked number 5000 today and next month it's ranked  
03:58:10 24 4500 because they've started dispensing more controlled  
03:58:13 25 substances of that report, the deterioration would mean that

03:58:18 1 they moved up in dispensing more controlled substances by  
03:58:23 2 500 points or places?

03:58:25 3 **Q** What is the purpose of sharing that information with  
03:58:28 4 your field leaders?

03:58:29 5 **A** So we want them to know that their store is dispensing  
03:58:34 6 more oxy, and that they should be checking on their  
03:58:40 7 supervision visits, do the dispensing patterns for that  
03:58:47 8 specific store make sense, what has changed in their  
03:58:50 9 business that would explain why they're dispensing more of a  
03:58:53 10 controlled substance.

03:58:54 11 **Q** This report that we're looking at here, the duration  
03:58:58 12 500 plus report, is that different from the coaching  
03:59:01 13 opportunities report that we looked at before?

03:59:03 14 **A** Yes.

03:59:03 15 **Q** Is it different from the report that we looked at that  
03:59:06 16 showed the control -- the percentage of controlled  
03:59:09 17 substances for each of the stores?

03:59:11 18 **A** Yes.

03:59:11 19 **Q** Is this another tool that Walgreens provides to its  
03:59:18 20 field leaders to help them look at what's going on in the  
03:59:20 21 stores around controlled substances?

03:59:22 22 **A** Yes.

03:59:22 23 **Q** All right. Do you know that Mr. Joyce, Brian Joyce,  
03:59:28 24 was the district manager overseeing Walgreens' Trumbull  
03:59:33 25 County stores? Are you aware of that?

03:59:34 1 **A** Yes.

03:59:34 2 **Q** I just want to show you the response, and my question  
03:59:41 3 is going to be whether this is what you would hope to see,  
03:59:45 4 if you have any concerns about it.

03:59:46 5 This is the response from RXM 09077.

03:59:54 6 What is that formulation, that e-mail address?

03:59:56 7 **A** That's an e-mail address specific to Store 0 -- or  
04:00:01 8 Store 09077. So that would come from a pharmacy manager at  
04:00:05 9 that store.

04:00:08 10 **Q** The pharmacy manager says to Brian Joyce, "Hey, Brian,  
04:00:11 11 so Walmart/Sam's Club, and Giant Eagle have stopped filling  
04:00:14 12 controls for a local doctor named Frank Veres. This doc has  
04:00:18 13 a reputation for prescribing a high number of pain meds, so  
04:00:23 14 I think over the past few months we have been picking up a  
04:00:25 15 lot of his patients.

04:00:26 16 "From our angle, Veres has always complied with our  
04:00:30 17 GFD guidelines and his patients are always on time, but the  
04:00:32 18 high ratio of controls written has become more obvious. To  
04:00:36 19 combat this, Greg and I have discussed not accepting any new  
04:00:40 20 controls from his office (since his patients have been  
04:00:42 21 displaced from those other pharmacies and the flood of  
04:00:46 22 controls is imminent). At this time, we still feel  
04:00:51 23 comfortable filling controls for our patients that have been  
04:00:54 24 coming here for years, but that is subject to change. I  
04:00:56 25 would like to hear you thoughts on the matter. Thanks."

04:00:58 1 Did I read all of that correctly?

04:01:00 2 **A** Yes.

04:01:00 3 **Q** And then you can see Brian's response is, "See below.  
04:01:11 4 Is there any way that we can refuse his scripts? This MD  
04:01:14 5 has been a problem for a long time."

04:01:16 6 And it goes on. And I'll call out the last two  
04:01:20 7 e-mails in the chain so you can see how they're addressing  
04:01:23 8 this.

04:01:26 9 First of all, let's see who Zach Leslie is.

04:01:31 10 Can you see that Mr. Leslie is an area healthcare  
04:01:34 11 supervisor?

04:01:34 12 **A** Yes.

04:01:34 13 **Q** Are area healthcare supervisors pharmacists?

04:01:37 14 **A** Yes.

04:01:38 15 **Q** Mr. Leslie says, "We have to continue to adhere to our  
04:01:46 16 GFD policy and guidelines. However, if they are refusing  
04:01:49 17 scripts and they feel this is a problem due to poor  
04:01:53 18 prescribing behaviors, the store can also contact the Ohio  
04:01:56 19 Board of Medicine to report the prescriber. Please ensure  
04:02:00 20 that if they feel this doctor is not prescribing medications  
04:02:03 21 appropriately, they need to have good documentation."

04:02:06 22 And then Mr. Joyce forwards that to the RXM and says,  
04:02:12 23 "Review each prescription on its own merit."

04:02:16 24 Does this course of communication between the field  
04:02:18 25 leader and the pharmacist at the store, in your view,

04:02:22 1 comport with Walgreens policy?

04:02:25 2 **A** Yes.

04:02:25 3 **Q** Why?

04:02:26 4 **A** Because it's showing that multiple leaders in the  
04:02:30 5 district as well as the pharmacy manager are doing their due  
04:02:35 6 diligence around the dispensing of controlled substances and  
04:02:41 7 why more controlled substances are being filled in their  
04:02:43 8 store.

04:02:44 9 **Q** All right. I have a few questions about the oversight  
04:02:48 10 that you do around orders that are placed by the Walgreens  
04:02:53 11 pharmacies to the distribution centers.

04:02:56 12 Does Walgreens distribute controlled substances today?

04:03:00 13 **A** No.

04:03:00 14 **Q** At some point did Walgreens distribute controlled  
04:03:07 15 substances to its own pharmacies?

04:03:08 16 **A** Yes.

04:03:08 17 **Q** Do you know when Walgreens stopped doing that?

04:03:10 18 **A** We started getting out of doing that around the time  
04:03:18 19 that I started the pharmacy integrity team, but I believe we  
04:03:23 20 were completely free of all controlled substances from our  
04:03:26 21 distribution centers at the end of 2014. I might be off on  
04:03:29 22 the date daily.

04:03:33 23 **Q** Did Walgreens in the time frame when it was  
04:03:35 24 distributing controlled substances ever distribute to any  
04:03:39 25 pharmacy that was not a Walgreens pharmacy?

04:03:41 1 **A** No.

04:03:41 2 **Q** I believe you testified already that when you started  
04:03:48 3 in pharmaceutical integrity in 2012, Walgreens had a system  
04:03:52 4 in place to monitor the orders that Walgreens pharmacies  
04:03:57 5 placed to its distribution centers.

04:03:59 6 Do I have that right?

04:04:00 7 **A** Yes.

04:04:00 8 **Q** When you started in 2012, did you have an  
04:04:07 9 understanding that at that point in time, the DEA wanted  
04:04:12 10 Walgreens to cancel orders that it deemed potentially  
04:04:19 11 suspicious and to investigate them before shipping?

04:04:22 12 MR. WEINBERGER: Objection.

04:04:31 13 THE COURT: Let's go on the headphones for a  
04:04:33 14 minute.

04:04:34 15 (At side bar at 4:04 p.m.) ever

04:04:43 16 THE COURT: Mr. Weinberger, what's the  
04:04:44 17 objection?

04:04:45 18 MR. WEINBERGER: There's been no foundation  
04:04:46 19 laid about her having reviewed any of the DEA regulations or  
04:04:53 20 what her knowledge was with respect to distribution.

04:04:58 21 MS. SWIFT: I just asked her if she had an  
04:05:00 22 understanding.

04:05:00 23 Sorry, Judge.

04:05:01 24 THE COURT: I'll allow the question. She  
04:05:03 25 either has this understanding or she doesn't. If she does,



04:05:06 1 then we'll go further.

04:05:09 2 MR. WEINBERGER: Okay. Thank you.

04:05:11 3 (In open court at 4:05 p.m.)

04:05:17 4 BY MS. SWIFT:

04:05:18 5 **Q** All right. I'll withdraw and reask it again just so  
04:05:21 6 that it's fresh in your mind.

04:05:23 7 When you started in pharmaceutical integrity in  
04:05:29 8 2012 -- strike that. I already asked that one.

04:05:30 9 When you started in pharmaceutical integrity in 2012,  
04:05:36 10 did you have an understanding at that point in time that the  
04:05:40 11 DEA wanted Walgreens to cancel orders from its pharmacies  
04:05:47 12 that it deemed potentially suspicious and to investigate  
04:05:50 13 them before shipping them?

04:05:51 14 MR. WEINBERGER: Objection.

04:05:57 15 THE COURT: Overruled.

04:05:58 16 **A** I understood that the responsibility of distributing a  
04:06:05 17 controlled substance --

04:06:05 18 THE COURT: I'd like you to answer that  
04:06:07 19 specific question if you can. Yes or no, did you have an  
04:06:10 20 understanding?

04:06:12 21 **A** Yes.

04:06:13 22 **Q** At Walgreens today, and since you've been in place in  
04:06:20 23 2012, does Walgreens have a system that evaluates  
04:06:26 24 potentially suspicious orders?

04:06:28 25 **A** Yes.

04:06:29 1 Q How does that system work?

04:06:33 2 A So a pharmacy -- a pharmacy cannot order more tablets  
04:06:40 3 that come in to that location above the ceiling without  
04:06:46 4 filling out a order form. And --

04:06:51 5 Q Do -- sorry. Go ahead. I didn't mean to interrupt  
04:06:54 6 you.

04:06:55 7 A And the order form will come to my team requesting  
04:06:59 8 whether or not -- or requesting that they want more tablets.  
04:07:02 9 And my team will determine whether or not the documentation  
04:07:07 10 for getting more tablets into that location makes sense for  
04:07:10 11 what's happening in the business after the district manager  
04:07:13 12 does their due diligence, it goes to them first, then it  
04:07:16 13 goes to my team.

04:07:20 14 And if we deem that it passes and it makes sense, then  
04:07:25 15 the order is released to the wholesaler.

04:07:30 16 Q Do you know whether prior to 2012, before you came  
04:07:33 17 into your role in pharmaceutical integrity, do you know  
04:07:37 18 whether DEA guidance on how to handle that process of  
04:07:41 19 evaluating suspicious orders was different?

04:07:43 20 A I don't know specifics, but I know it changed.

04:07:59 21 Q You testified that you had an understanding that prior  
04:08:02 22 to 2012, when you came on board in pharmaceutical integrity,  
04:08:06 23 there was a system that Walgreens had in place, but you were  
04:08:10 24 not familiar with how it worked.

04:08:13 25 Why is that? Why didn't you have a familiarity with

04:08:15 1 how that system worked?

04:08:16 2 **A** That was a different department. And when I came on  
04:08:22 3 board, the new system was coming into place.

04:08:25 4 **Q** Do you know how many people worked on the earlier  
04:08:27 5 system over time?

04:08:29 6 **A** I do not.

04:08:30 7 **Q** Do you know the processes and procedures that they  
04:08:33 8 followed?

04:08:34 9 MR. WEINBERGER: Objection.

04:08:37 10 THE COURT: Sustained.

04:08:50 11 **Q** I think you testified a moment ago that the system  
04:08:52 12 that Walgreens has in place today to evaluate orders from  
04:08:57 13 its pharmacists involves ceiling limits and tolerance. Is  
04:09:02 14 that a fair characterization?

04:09:03 15 **A** Yes.

04:09:03 16 **Q** The pharmacies, if they want to order more controlled  
04:09:11 17 substances and they get within the ceiling limits and the  
04:09:16 18 tolerance limits, what do they have to do in order to get  
04:09:19 19 that additional medication?

04:09:20 20 **A** They have to request through an order form and fill  
04:09:24 21 out documentation as to the reason why they need that  
04:09:28 22 additional medication in their store.

04:09:31 23 **Q** Why didn't Walgreens stop using that process of  
04:09:39 24 evaluating orders in 2014 when Walgreens stopped  
04:09:43 25 distributing controlled substances?

04:09:43 1 **A** You know, I felt that it was a good checks and  
04:09:48 2 balances for us to, you know, make sure that we have the  
04:09:50 3 information about our stores. And additionally, just  
04:09:54 4 because Walgreens approves that it's okay for those stores  
04:09:59 5 to get more tablets does not mean that the wholesaler is  
04:10:03 6 going to approve it. And there are times when it would  
04:10:07 7 trigger on the wholesaler side as an order of interest, and  
04:10:15 8 they would ask our team for information about that order,  
04:10:18 9 and I would have that information at the ready and be able  
04:10:20 10 to give it to the wholesaler.

04:10:23 11 And it, you know, helps patient care because generally  
04:10:27 12 they have a patient waiting and, you know, it would save  
04:10:30 13 time for the wholesaler because we'd have that information  
04:10:33 14 already documented from the store and the district manager  
04:10:37 15 on that order.

04:10:38 16 **Q** I'm going to see if I can break that down a little  
04:10:40 17 bit.

04:10:41 18 Today does Walgreens order controlled substances from  
04:10:47 19 another distributor, a wholesaler as you're referring to it?

04:10:49 20 **A** Yes.

04:10:50 21 **Q** Is it your understanding that the wholesaler Walgreens  
04:10:54 22 orders from has its own order monitoring system in place?

04:10:57 23 **A** Yes.

04:10:57 24 **Q** Is that what you were referring to a moment ago when  
04:11:00 25 you said it might not go through the wholesaler?

04:11:02 1 **A** Yes.

04:11:02 2 **Q** Then Walgreens also has an additional system on top of  
04:11:06 3 that to monitor the orders that are placed by its  
04:11:09 4 pharmacies, is that what I'm hearing you say?

04:11:11 5 **A** Yes.

04:11:11 6 **Q** Do you have an understanding whether Walgreens is  
04:11:14 7 obligated today to have a suspicious order monitoring system  
04:11:21 8 in place since it's not distributing anymore?

04:11:23 9 MR. WEINBERGER: Objection.

04:11:24 10 THE COURT: Overruled.

04:11:25 11 **A** We are not required. We do it as an extra step.

04:11:29 12 **Q** Is one of the reasons that you do that as an extra  
04:11:32 13 step because if anything is out of the ordinary at one of  
04:11:35 14 your stores, you want to know about it?

04:11:37 15 **A** Yes.

04:11:37 16 **Q** Is one of the reasons you do that, even though you're  
04:11:40 17 not required to do it, because you want to prevent  
04:11:43 18 controlled substances from being diverted?

04:11:49 19 **A** Yes.

04:11:49 20 **Q** All right. You were asked questions today about a  
04:12:01 21 2013 settlement agreement with the DEA.

04:12:02 22 Do you remember that?

04:12:03 23 **A** Yes.

04:12:03 24 **Q** And you were asked about the addendum on prospective  
04:12:08 25 compliance, which are the three pages at the end of that

04:12:11 1 agreement.

04:12:11 2 Do you remember those questions?

04:12:12 3 **A** Yes.

04:12:12 4 **Q** Do you still have handy Plaintiffs' Exhibit 15? It's  
04:12:35 5 a big thick one.

04:12:42 6 **A** Oh, yes. Thank you.

04:12:43 7 **Q** Ms. Polster, do you have an understanding that this  
04:12:47 8 2013 agreement related to a distribution center in Florida  
04:12:51 9 and six Florida pharmacies?

04:12:53 10 **A** Yes.

04:12:53 11 **Q** Is the -- I'll ask you to turn to the last three pages  
04:12:58 12 of the settlement agreement, which are that addendum on  
04:13:01 13 prospective compliance.

04:13:02 14 Do you have that?

04:13:06 15 **A** Yes.

04:13:06 16 **Q** Is that three pages, is that a list of things that  
04:13:09 17 Walgreens agreed to do as part of a settlement with the DEA  
04:13:13 18 regarding six pharmacies in Florida?

04:13:15 19 **A** Yes.

04:13:17 20 **Q** Were you involved in making sure that Walgreens  
04:13:19 21 complied with that agreement?

04:13:20 22 **A** Yes.

04:13:25 23 **Q** And you can see in the second sentence -- I want to  
04:13:26 24 pull it out.

04:13:45 25 The second sentence on the first page of the addendum

04:13:49 1 says, "To the extent any compliance measures identified  
04:13:53 2 below are not yet in place, Walgreens commits to implement  
04:13:57 3 such measures within the time frame specified herein."

04:14:00 4 Do you see that?

04:14:04 5 **A** Yes.

04:14:04 6 **Q** Were some of the items on this list of things that  
04:14:06 7 Walgreens was agreeing to do, were they things that  
04:14:08 8 Walgreens was already doing?

04:14:09 9 **A** Yes.

04:14:09 10 **Q** For example, the first item on the list is to maintain  
04:14:16 11 a department of pharmaceutical integrity.

04:14:18 12 That's your department, right?

04:14:20 13 **A** Yes.

04:14:20 14 **Q** Was your department already up and running by the time  
04:14:24 15 this agreement was put in place?

04:14:25 16 **A** Yes.

04:14:25 17 **Q** And you agreed to keep it in place. That's part of  
04:14:27 18 the agreement, right?

04:14:28 19 **A** Yes.

04:14:28 20 **Q** Have you kept your department in place?

04:14:32 21 **A** Yes.

04:14:32 22 **Q** The addendum to the agreement also says your  
04:14:37 23 department is to be composed of personnel with  
04:14:43 24 pharmacy-related training and managerial personnel. It says  
04:14:51 25 those people should be trained in relevant diversion-related

04:14:55 1 issues to coordinate compliance efforts related to  
04:14:57 2 controlled substances.

04:14:58 3 Do you see that?

04:14:58 4 **A** Yes.

04:14:58 5 **Q** Was your group made up of those kinds of people even  
04:15:03 6 before this agreement?

04:15:04 7 **A** Yes.

04:15:04 8 **Q** Do the people on your team coordinate compliance  
04:15:19 9 efforts related to controlled substances?

04:15:20 10 **A** Yes.

04:15:20 11 **Q** Have they done that ever since your department has  
04:15:23 12 been in place?

04:15:23 13 **A** Yes.

04:15:23 14 **Q** Did your team set up a dedicated contact point, an  
04:15:30 15 e-mail address for DEA to facilitate Walgreens' responses to  
04:15:34 16 DEA requests for information?

04:15:36 17 **A** Yes.

04:15:36 18 **Q** Then if you scroll down -- well, I'll scroll down.  
04:15:41 19 You see the section on pharmacies?

04:15:43 20 **A** Yes.

04:15:43 21 **Q** It says that within -- well, let me direct your  
04:15:50 22 attention.

04:15:53 23 You're familiar with this addendum, correct,  
04:15:56 24 Ms. Polster?

04:15:57 25 **A** Yes.



04:15:57 1 Q Does this second provision here have Walgreens  
04:16:03 2 committing to provide within two business days of a request  
04:16:07 3 from the DEA to provide controlled substance dispensing logs  
04:16:14 4 consisting of the categories of information the regulations  
04:16:16 5 require dispensers to maintain as records?

04:16:18 6 A Yes.

04:16:19 7 Q Does your team do that when the DEA asks you to?

04:16:21 8 A Yes.

04:16:23 9 Q The next item on the list is about the stickering of  
04:16:26 10 paper controlled substance prescriptions.

04:16:30 11 Do you see that?

04:16:30 12 A Yes.

04:16:30 13 Q Does Walgreens do what the DEA asked it to do with  
04:16:35 14 respect to stickering of controlled substance prescriptions?

04:16:38 15 A Yes.

04:16:38 16 Q It also says that Walgreens will maintain a paper file  
04:16:42 17 of those prescriptions organized chronologically by fill  
04:16:46 18 date and will provide a list upon request of the DEA.

04:16:50 19 Does Walgreens do that?

04:16:52 20 A Yes.

04:16:52 21 Q It says, "Walgreens will maintain paper prescriptions  
04:16:58 22 at the pharmacy for two years or however long they're  
04:17:02 23 required to be maintained by state law, whichever is  
04:17:05 24 longer."

04:17:05 25 Was Walgreens already doing that at the time of this

04:17:08 1 agreement?

04:17:08 2 **A** Yes.

04:17:08 3 **Q** Did Walgreens continue to do that?

04:17:10 4 **A** Yes.

04:17:11 5 **Q** There are two more pages of items in this addendum on  
04:17:18 6 prospective compliance. Do you agree with that?

04:17:21 7 **A** Yes.

04:17:21 8 **Q** Have you and your team taken steps to make sure that  
04:17:24 9 you did what you needed to do to comply with that agreement?

04:17:27 10 **A** Yes.

04:17:27 11 **Q** Has DEA ever put you on notice that it believed  
04:17:37 12 Walgreens was not in compliance with this agreement?

04:17:41 13 **A** No.

04:17:43 14 **Q** All right. We're getting close to the end.

04:17:45 15 Ms. Polster, are you and your team in Chicago, are you  
04:17:50 16 aware of the problems with opioid abuse around the country  
04:17:52 17 today?

04:17:53 18 **A** Yes.

04:17:53 19 **Q** Have you been aware of that for well over a decade?

04:17:56 20 **A** Yes.

04:17:57 21 **Q** Have you personally taken steps throughout your time  
04:18:01 22 at Walgreens to make sure that Walgreens' pharmacists are  
04:18:11 23 also aware of the problems associated with opioid abuse?

04:18:13 24 **A** Yes.

04:18:14 25 **Q** Is that something you take seriously?

04:18:16 1 **A** Yes.

04:18:16 2 **Q** Can you explain to the jury why that is?

04:18:19 3 **A** Well, as the industry has changed, as the opioid  
04:18:28 4 deaths and street drug deaths have increased, it's important  
04:18:32 5 for our pharmacists to be trained and be aware of what's  
04:18:39 6 happening across the industry. We try to keep them updated  
04:18:42 7 on new things that change and make sure that they are, you  
04:18:49 8 know, trained and have the most relevant information for  
04:18:52 9 them to practice pharmacy in our stores.

04:18:56 10 **Q** And are the policies and procedures that we looked at  
04:18:59 11 today part of the way you have communicated that to your  
04:19:03 12 pharmacists?

04:19:03 13 **A** Yes.

04:19:06 14 **Q** Are the slide presentations and the training decks  
04:19:09 15 that we've looked at today part of the way that you've tried  
04:19:12 16 to communicate that to your pharmacists?

04:19:15 17 **A** Yes.

04:19:15 18 **Q** Have you in the course of your oversight of the  
04:19:21 19 policies and procedures at Walgreens tried to take steps as  
04:19:25 20 to reduce opioid abuse and diversion?

04:19:26 21 **A** Yes.

04:19:28 22 **Q** Do you sometimes speak at conferences to people  
04:19:32 23 suffering from substance use disorders?

04:19:35 24 **A** Yes.

04:19:35 25 **Q** What do you talk to them about?

04:19:37 1 **A** I talk to them about our drug take back program, the  
04:19:44 2 availability of naloxone.

04:19:48 3 **Q** What is your drug take back program? I'm not sure the  
04:19:51 4 jury's heard about that before.

04:19:53 5 **A** We have a program in some of our stores where we have  
04:19:56 6 a kiosk that patients can take old medications from their  
04:20:01 7 medicine cabinets and put it in this kiosk in a location  
04:20:05 8 that will then be destroyed and taken out of -- you know,  
04:20:15 9 protect people in the people's homes from getting  
04:20:19 10 medications that they should not use.

04:20:21 11 **Q** Let me break that down a little bit.  
04:20:23 12 You said you have kiosks in the Walgreens stores.  
04:20:27 13 Do you have them in all stores?

04:20:28 14 **A** No. They're in a little more than 1500.

04:20:31 15 **Q** Okay. Why is it important for people to dispose of  
04:20:36 16 their unused medications?

04:20:38 17 **A** You know, it just decreases the chance of a  
04:20:43 18 prescription being misused. You know, you might have  
04:20:45 19 surgery or you might have had a baby or something like that  
04:20:49 20 where you have -- you were given pain medications or any  
04:20:53 21 other medication, frankly. And if you're not taking it  
04:20:56 22 anymore, you should get it out of your house and destroy it  
04:21:01 23 properly so it's not going into the water or wastewater,  
04:21:05 24 it's going into an appropriate place to be incinerated or  
04:21:10 25 destroyed safely.

04:21:12 1 Q Does Walgreens partner with law enforcement like the  
04:21:16 2 DEA on drug take back programs?

04:21:18 3 A Yes, we do.

04:21:19 4 Q Does Walgreens also provide something called DisposeRx  
04:21:26 5 kits?

04:21:26 6 A Yes, we do.

04:21:27 7 Q What are those?

04:21:27 8 A DisposeRx kits are -- it's a powder that is available  
04:21:33 9 at all of our locations to give to a patient where if they  
04:21:38 10 have leftover medications, they can pour this powder into  
04:21:45 11 their vial and add water. It turns into a gummy substance  
04:21:49 12 and it renders the pills inside the bottle inactive.

04:21:55 13 Q Are the drug take back kiosks that Walgreens has and  
04:21:58 14 the DisposeRx kits that Walgreens provides, are those  
04:22:02 15 programs meant to prevent diversion?

04:22:05 16 A Yes.

04:22:07 17 Q Do you have an understanding of whether they do  
04:22:10 18 prevent diversion?

04:22:13 19 MR. LANIER: Objection.

04:22:13 20 A Yes, they -- you're getting them out of the people's  
04:22:19 21 homes so that somebody cannot take them if it's not  
04:22:21 22 appropriate for them would be a way of presenting diversion.

04:22:26 23 Q Ms. Polster, do you believe that Walgreens'  
04:22:29 24 pharmacists are well trained and supported to identify and  
04:22:32 25 resolve red flags on prescriptions?

04:22:34 1 **A** I do.

04:22:36 2 **Q** Do you believe that that's been the case for as long  
04:22:39 3 as you can remember?

04:22:40 4 **A** Yes.

04:22:40 5 **Q** Do you believe that you have improved over time?

04:22:43 6 **A** Yes.

04:22:43 7 **Q** Do you believe Walgreens pharmacists are well trained  
04:22:48 8 and supported to document the resolution of red flags when  
04:22:52 9 they deem it to be appropriate?

04:22:54 10 **A** I do.

04:22:54 11 **Q** Do you believe that Walgreens' pharmacists are well  
04:22:59 12 trained and supported to refuse illegitimate prescriptions?

04:23:02 13 **A** Yes.

04:23:03 14 **Q** Does Walgreens provide its pharmacists with data,  
04:23:06 15 information, and other tools to assist them in doing their  
04:23:09 16 jobs?

04:23:09 17 **A** Yes.

04:23:12 18 MS. SWIFT: Thank you. That's all I've got.

04:23:14 19 THE WITNESS: Thank you.

04:23:16 20 THE COURT: Thank you, Ms. Swift.

04:23:18 21 Any of the other defendants have any questions of  
04:23:21 22 Ms. Polster?

04:23:22 23 MR. MAJORAS: No, Your Honor.

04:23:23 24 MS. SULLIVAN: No, Your Honor.

04:23:25 25 MR. DELINSKY: No, Your Honor.

04:23:25 1 THE COURT: Okay. It's time for redirect, but  
04:23:27 2 also if any of the jurors have any questions, provide them  
04:23:31 3 to Mr. Pitts. I'll take a look.

04:23:36 4 (Juror question review.)

04:28:41 5 MR. LANIER: Your Honor, we'll incorporate  
04:28:43 6 these, and if we don't incorporate them all, then defense  
04:28:46 7 counsel will.

04:28:55 8 MS. SWIFT: Actually, Your Honor, I'd be happy  
04:28:57 9 to go ahead and ask the questions.

04:29:01 10 THE COURT: I think we'll go in turn. You'll  
04:29:04 11 have a follow-up opportunity, Ms. Swift.

04:29:06 12 MS. SWIFT: Thank you, Your Honor.

04:29:33 13 MR. LANIER: May it please the Court, ladies  
04:29:35 14 and gentlemen, Ms. Polster.

04:29:41 15 - - - - -

04:29:42 16 CROSS-EXAMINATION

04:29:42 17 BY MR. LANIER:

04:29:42 18 Q You have remarkable endurance, ma'am. So does the  
04:29:45 19 jury, so does the judge.

04:29:46 20 I'm the plaintiffs' lawyer. My name is Mark Lanier.  
04:29:49 21 And I'd like to ask you some questions, okay?

04:29:52 22 A Okay.

04:29:52 23 Q This time your road map gets a little bit longer, but  
04:29:56 24 we're going to drive down this road at a fast pace.

04:29:59 25 We'll talk about the crisis, quick stop, we'll talk

04:30:03 1 about pharmacists, quick stop, training in good faith  
04:30:07 2 dispensing, longer stop, computers, medium stop, store  
04:30:11 3 reports, medium stop. Okay?

04:30:13 4 **A** Okay.

04:30:14 5 **Q** First stop, the crisis.

04:30:22 6 You said that you believed the opioid crisis began in  
04:30:26 7 2011 because the change in the law concerning clinics.

04:30:30 8 Remember that testimony?

04:30:30 9 **A** Yes.

04:30:31 10 **Q** And in that regard I've got a few questions for you  
04:30:35 11 that you could help us with. Legal changes on the pain  
04:30:39 12 clinics, first question.

04:30:40 13 What law?

04:30:42 14 **A** I believe that was asked already, and I am not exactly  
04:30:46 15 familiar as to what law it is.

04:30:48 16 **Q** So don't know?

04:30:49 17 **A** Okay.

04:30:50 18 **Q** Is that fair?

04:30:50 19 **A** Yes.

04:30:51 20 **Q** Where? Which states?

04:30:55 21 **A** I know Florida, and I've heard in other states as  
04:31:01 22 well. I cannot think off the top of my head, but pain  
04:31:05 23 clinics across the country stopped dispensing controlled  
04:31:10 24 substances for prescriptions that the pain management  
04:31:14 25 doctors were writing.



04:31:16 1 Q So others, don't know; is that fair?

04:31:19 2 A Okay.

04:31:19 3 Q When? When was the law changed?

04:31:24 4 A It began somewhere around 2010, 2011 is my

04:31:27 5 understanding.

04:31:28 6 Q And is that in Florida or is that all over the

04:31:30 7 country?

04:31:31 8 A Again, I remember Florida specifically, but saw the

04:31:35 9 change across the country.

04:31:36 10 Q But you're not a legal scholar on this, fair?

04:31:40 11 A Fair.

04:31:41 12 Q You're sort of just putting together from a patchwork

04:31:45 13 of memory. You don't really have any memory of this, do

04:31:47 14 you?

04:31:47 15 A Oh, I do have memory because we started seeing more

04:31:51 16 pain management prescriptions coming into our stores.

04:31:54 17 Q Great. So when did it change in Ohio?

04:31:56 18 A I don't know the answer to that specific to Ohio.

04:32:00 19 Q Were you a pharmacist when it changed?

04:32:04 20 A Yes.

04:32:04 21 Q So were you practicing behind the counter?

04:32:09 22 A No.

04:32:09 23 Q So when you say, I knew it was changing because the

04:32:12 24 way it was happening in our stores, were you working as a

04:32:15 25 pharmacist in those stores?

04:32:17 1 **A** No.

04:32:18 2 **Q** And this is what you attribute the drug rise to and  
04:32:27 3 the epidemic, right?

04:32:31 4 **A** Part of it, yes.

04:32:32 5 **Q** And yet, if we look at a PowerPoint, weren't you over  
04:32:36 6 the pharmaceutical integrity division in 2013?

04:32:41 7 **A** Yes.

04:32:41 8 **Q** If we look at a PowerPoint from the pharmaceutical  
04:32:46 9 integrity division in 2013, Plaintiffs' Exhibit 14746,  
04:32:55 10 please, Maria and Rachel -- Ms. Fleming and Ms. Lanier.

04:33:12 11 Do you have that in front of you, ma'am?

04:33:14 12 **A** I do.

04:33:15 13 **Q** So here your division, your unit that you head up puts  
04:33:19 14 out a slide in 2013 talking about the epidemic?

04:33:22 15 **A** Yes.

04:33:23 16 **Q** And it has the epidemic associated with painkillers.  
04:33:27 17 That's what opiates are, right?

04:33:28 18 **A** Yes.

04:33:30 19 **Q** And it has it starting in 2000 and has it going up  
04:33:36 20 through 2009 at a pretty high rate, doesn't it?

04:33:40 21 **A** Yes.

04:33:40 22 **Q** And this is one that talks about it as a national  
04:33:43 23 prescription drug epidemic. True?

04:33:46 24 **A** Yes.

04:33:47 25 **Q** Doesn't say it started in 2010 and '11 when the pain

04:33:51 1 clinics shut down. This has been a problem dating back to  
04:33:55 2 2000, according to your unit's work, right?

04:33:59 3 **A** Yes.

04:33:59 4 **Q** So maybe it would have been helpful for your company  
04:34:08 5 to put some of these policies in place much earlier. Make  
04:34:12 6 sense?

04:34:16 7 **A** My company did put things in place.

04:34:19 8 **Q** Well, we'll look at the dates, ma'am, and you've  
04:34:21 9 already looked at the dates. We'll look at the stuff y'all  
04:34:23 10 have done since we filed the lawsuit, we'll look at all of  
04:34:26 11 that. But I mean back in the 2000 to 2009 range would be  
04:34:32 12 important to do everything you could to stop this national  
04:34:34 13 epidemic, right?

04:34:37 14 **A** Right.

04:34:38 15 **Q** Thank you.

04:34:38 16 That's the crisis. Now let's talk about pharmacists.  
04:34:45 17 Real brief start.

04:34:46 18 Starting salary for a pharmacist, a hundred thousand  
04:34:50 19 or so?

04:34:50 20 **A** Yes.

04:34:50 21 **Q** You make about a half million dollars though yourself,  
04:34:54 22 annually; is that right?

04:34:56 23 **A** My salary is not half a million dollars.

04:34:58 24 **Q** If you add your bonuses and stuff, I looked at your  
04:35:01 25 personnel report, it was north of 400,000, wasn't it?

04:35:04 1 **A** When everything vests?

04:35:09 2 **Q** Yeah.

04:35:10 3 **A** Yes.

04:35:11 4 **Q** Thank you.

04:35:11 5 And you've had a career at Walgreens yourself?

04:35:18 6 **A** Yes.

04:35:18 7 **Q** How long did your husband work for them?

04:35:20 8 **A** 36 years.

04:35:22 9 **Q** Career man too?

04:35:24 10 **A** Yes.

04:35:24 11 **Q** Then your mother-in-law was there some and your  
04:35:29 12 daughter was there some; is that fair?

04:35:31 13 **A** Yes.

04:35:31 14 **Q** Now, you've been there for 30-plus years, and you  
04:35:37 15 spoke about pharmacists' concerns, but can we just assume  
04:35:42 16 you're not really speaking for all the pharmacists at  
04:35:45 17 Walgreens? Right?

04:35:49 18 **A** Sure.

04:35:49 19 **Q** And you don't know what all the concerns are of all  
04:35:53 20 the pharmacists at Walgreens, right?

04:35:56 21 **A** Sure.

04:35:57 22 **Q** And if you were going to be totally candid with us  
04:36:00 23 under oath, you would probably admit that there are some  
04:36:05 24 really great pharmacists at Walgreens, right?

04:36:08 25 **A** Yes, we have great pharmacists.

04:36:09 1 Q Doing it right, day in, day out, working hard, great  
04:36:14 2 customer service, protecting the communities, really good  
04:36:17 3 people. Right?

04:36:19 4 A Yes.

04:36:19 5 Q And you also, in all candor, would admit there are  
04:36:24 6 probably some that aren't all that hot, right?

04:36:28 7 A It is possible, yes.

04:36:29 8 Q All right. That's our stop at pharmacists.

04:36:33 9 Now we have a little longer delay at good faith  
04:36:39 10 dispensing, okay?

04:36:41 11 A Okay.

04:36:41 12 Q Now, I want to start with this. You were asked a lot  
04:36:58 13 of general questions. You were asked questions about  
04:37:03 14 training for pharmacists.

04:37:04 15 Remember those?

04:37:05 16 A Yes.

04:37:05 17 Q You were asked questions about pharmacists doing their  
04:37:08 18 job and doing it right.

04:37:11 19 Remember those?

04:37:12 20 A Yes.

04:37:12 21 Q You were asked questions about motivation and what  
04:37:15 22 motivates a pharmacist and why they care.

04:37:19 23 Right?

04:37:20 24 A Yes.

04:37:20 25 Q You were asked questions about how pharmacists follow

04:37:23 1 good faith dispensing.

04:37:26 2 Right?

04:37:26 3 **A** Yes.

04:37:26 4 **Q** But you never told the jury about Megan Owens, did  
04:37:30 5 you?

04:37:30 6 **A** I don't know specifically who Megan Owens is.

04:37:33 7 **Q** You never told them about Trudi-Ann Blackellar, did  
04:37:38 8 you?

04:37:38 9 **A** No.

04:37:38 10 **Q** You never told them about Keri Kratofil, did you?

04:37:44 11 **A** She was on one of the e-mails that you showed me.

04:37:53 12 **Q** But how she fit in as a potential witness in the case  
04:37:57 13 involving Walgreens that the DEA was filing, DOJ?

04:38:00 14 **A** I don't know. I didn't know that.

04:38:02 15 **Q** Yeah, you never told the jury about Caren Cohalla, did  
04:38:07 16 you?

04:38:07 17 **A** No.

04:38:08 18 **Q** You never told the jury about Terry Collins, did you?

04:38:11 19 **A** No.

04:38:11 20 **Q** You never told them about Nancy Levi, did you?

04:38:14 21 **A** No.

04:38:14 22 **Q** Never told them about Cassie Mulvey, did you?

04:38:17 23 **A** No.

04:38:17 24 **Q** Never told them about Tara Kapavicus, did you?

04:38:21 25 **A** No.

04:38:21 1 Q Never told them about Shane Van Gordon, did you?

04:38:24 2 A No.

04:38:25 3 Q I ran out of room on the paper, but there's a host of  
04:38:28 4 others you never told them about who have allegedly had  
04:38:33 5 problems within the company, true?

04:38:36 6 A That's what you're telling me.

04:38:38 7 Q Well, did you do your research before you said all of  
04:38:44 8 our pharmacists do great work?

04:38:47 9 A To my knowledge, our pharmacists do great work.

04:38:49 10 Q I thought you told me yesterday you never read the  
04:38:52 11 order to show cause where the allegations were made about  
04:38:55 12 what your pharmacists had done wrong.

04:38:57 13 A I didn't read the entire order to show cause, no.

04:39:00 14 Q So you did not read whether or not there were  
04:39:04 15 pharmacists specifically --

04:39:06 16 MS. SWIFT: Objection, Your Honor.

04:39:08 17 THE COURT: Overruled.

04:39:09 18 Q -- specifically by name that weren't doing all of  
04:39:13 19 these things you said to Ms. Swift were being done?

04:39:16 20 A I did not read it, no.

04:39:18 21 Q Okay. Now, you talked about the 2012 policy.

04:39:26 22 Do you remember that?

04:39:27 23 A Yes.

04:39:27 24 Q And you said, in answer to this question, "Why did you  
04:39:34 25 decide to include these new bullet points in the good faith

04:39:40 1 dispensing policy? Why did you include the new changes.

04:39:43 2 And you talked about all the different things that y'all do  
04:39:46 3 differently. Remember?

04:39:47 4 **A** Yes.

04:39:47 5 **Q** Well, the truth of the matter is there's another  
04:39:49 6 reason why, isn't there, that you didn't tell the jury?

04:39:58 7 **A** And what would that be, Mr. Lanier?

04:39:59 8 **Q** Well, this new policy came out after y'all got the  
04:40:03 9 order to show cause by Joe Rannazzisi involving problems  
04:40:07 10 with your policies and the way they were being implemented,  
04:40:10 11 right?

04:40:13 12 **A** I don't know when the order to show cause came.

04:40:15 13 **Q** You didn't bother to look at the order to show cause  
04:40:18 14 in Exhibit 15, which is the last exhibit I believe you  
04:40:22 15 testified about with Ms. Swift?

04:40:24 16 **A** You asked me if I read that. I did not.

04:40:28 17 **Q** There's a settlement and memorandum of agreement that  
04:40:32 18 is Exhibit 15 that was entered into on behalf of the whole  
04:40:36 19 country. Remember that?

04:40:37 20 **A** Yes.

04:40:38 21 **Q** And attached to it was an Appendix A. And the  
04:40:41 22 Appendix A that's attached to Exhibit 15 talks about the  
04:40:47 23 Walgreens Store 6094 that was allegedly refilling  
04:40:54 24 prescriptions for controlled substances too early and had  
04:40:56 25 allegedly filled prescriptions issued using expired DEA



04:41:02 1 registration numbers, and had dispensed controlled  
04:41:06 2 substances to individuals that the store knew or should have  
04:41:10 3 known were diverting the controlled substances.

04:41:13 4 Remember that?

04:41:15 5 **A** Yes.

04:41:15 6 **Q** And that was part of an administrative memorandum of  
04:41:20 7 agreement that was entered into by the company in 2011,  
04:41:29 8 isn't it?

04:41:29 9 **A** Yes.

04:41:30 10 **Q** And that is the agreement that caused the company to  
04:41:32 11 rewrite their good faith dispensing as it came out in 2012,  
04:41:36 12 isn't it?

04:41:37 13 **A** I don't know the answer to that, but, yes, the timing  
04:41:42 14 that you're talking about is correct.

04:41:44 15 **Q** Okay. So when you say the reason we wrote it is  
04:41:47 16 because we came across new information, well, what you did  
04:41:50 17 is you entered into an agreement with the Department of  
04:41:54 18 Justice for the United States of America, didn't you?

04:41:57 19 **A** We did.

04:42:06 20 **Q** And this is when you added the three-drug cocktail to  
04:42:11 21 your policy to ensure your pharmacists were aware of it,  
04:42:14 22 right?

04:42:14 23 **A** That's where we changed the terminology and we added  
04:42:19 24 the word "cocktail," yes.

04:42:22 25 **Q** Well, now, this can be a lethal cocktail, can't you?

04:42:25 1 **A** Yes, when it's not used appropriately, yes.

04:42:28 2 **Q** And aren't pharmacists supposed to know about drugs'  
04:42:32 3 side effects and their contraindications already?

04:42:35 4 **A** Yes.

04:42:35 5 **Q** Did you hire pharmacists that already knew that?

04:42:41 6 **A** Pharmacists know that in pharmacy school, yes.

04:42:44 7 **Q** And yet, there was a need to put it into the policy,  
04:42:48 8 wasn't there?

04:42:48 9 **A** We did add it to the pharmacy policy -- or the policy  
04:42:52 10 to make it more clear for them to understand what was  
04:42:56 11 changing in the industry and how prescribing practices were  
04:43:00 12 changing.

04:43:00 13 **Q** And then you were asked questions about contacting law  
04:43:05 14 enforcement under the 2006 policies.

04:43:08 15 Remember that?

04:43:09 16 **A** Yes.

04:43:09 17 **Q** And it was pointed out to the jury and highlighted,  
04:43:12 18 "If the prescriber informs the pharmacist that a  
04:43:18 19 prescription for a controlled substance is not valid or  
04:43:21 20 authorized, contact local law enforcement."

04:43:24 21 Do you see that?

04:43:25 22 **A** Yes. That's referring to forged prescriptions, yes.

04:43:28 23 **Q** It's referring to what?

04:43:29 24 **A** Forged prescriptions.

04:43:30 25 **Q** Forged prescriptions.

04:43:37 1 "Because on the backside of this policy," unread to  
04:43:40 2 the jury," is something that's different about Oklahoma  
04:43:45 3 stores."

04:43:45 4 Do you see that?

04:43:46 5 **A** Yes.

04:43:46 6 **Q** "In Oklahoma, if notified by a prescriber about an  
04:43:51 7 allegedly illegal activity involving a controlled substance,  
04:43:57 8 please contact your local police department immediately."

04:43:59 9 Do you see that?

04:44:00 10 **A** Yes.

04:44:00 11 **Q** That would be a pretty good policy to have in Ohio,  
04:44:03 12 wouldn't it?

04:44:03 13 **A** What's different between that and the previous page --

04:44:11 14 **Q** The previous page only deals with --

04:44:14 15 MS. SWIFT: Objection. She wasn't done with  
04:44:15 16 her answer.

04:44:16 17 **Q** I'm sorry.

04:44:17 18 MR. LANIER: I apologize, Judge. I didn't  
04:44:19 19 understand.

04:44:19 20 THE COURT: That's okay.

04:44:20 21 **A** The previous page is talking about when they call the  
04:44:23 22 prescriber and the prescriber says, I did not write this  
04:44:26 23 prescription.

04:44:26 24 **Q** Right, forged?

04:44:27 25 **A** Yes.

04:44:27 1 Q But this is not just that. This is "illegal  
04:44:34 2 activity." So perhaps you're notified by a prescriber that  
04:44:36 3 it's not a forged -- it's not a forged prescription, but the  
04:44:41 4 doctors found out that another doctor had written, or the  
04:44:45 5 doctors found out that, you know, any number of things that  
04:44:48 6 doctors may find out.

04:44:49 7 Do you see that?

04:44:50 8 A Yes.

04:44:50 9 Q And so in Oklahoma, you all put in bold print Oklahoma  
04:44:56 10 stores, right?

04:44:57 11 A Yes.

04:44:59 12 Q And then say in Oklahoma -- I mean, don't you think  
04:45:01 13 that's a better policy just to say in the United States of  
04:45:08 14 America?

04:45:08 15 A So if a state board of pharmacy changes any type of a  
04:45:13 16 regulation that needs to be called out, it will be called  
04:45:15 17 out on that. But we never told our pharmacists that they  
04:45:18 18 shouldn't or couldn't contact law enforcement for any  
04:45:22 19 prescription that they felt had illegal activity.

04:45:27 20 Q Ma'am, it doesn't say that here. This doesn't say,  
04:45:31 21 hey, the state board of pharmacy may want you to do that,  
04:45:37 22 but we don't tell you if you could or couldn't.

04:45:40 23 What you've done here is singled out Oklahoma for --

04:45:44 24 A I see that.

04:45:45 25 Q -- this treatment.

04:45:45 1 **A** Yes.

04:45:46 2 **Q** Why didn't you single out Ohio?

04:45:49 3 **A** I don't know the reason for that specific entry, but I  
04:45:51 4 can tell you from practice that I've had in the past when a  
04:45:57 5 board of pharmacy has a specific regulation that we need to  
04:46:00 6 call out by the state, but in no way are we telling our  
04:46:03 7 pharmacists anywhere in that policy that they cannot contact  
04:46:05 8 local law enforcement for any prescription that they want  
04:46:09 9 to.

04:46:12 10 **Q** We'll look in a little bit at this box of refusals to  
04:46:15 11 fill. I think there are like 640 something in there by our  
04:46:20 12 count.

04:46:20 13 How many times do you think y'all contacted law  
04:46:23 14 enforcement on those?

04:46:23 15 **A** I don't know the answer to that.

04:46:32 16 **Q** Now, on those policies, by the way, that y'all sent  
04:46:35 17 out, those good faith dispensing policies in 1998, remember  
04:46:44 18 those?

04:46:44 19 **A** Yes.

04:46:45 20 **Q** Do you do stuff with your hands, like tools and things  
04:46:52 21 like that? Do you build?

04:46:53 22 **A** I don't build things.

04:46:56 23 **Q** Okay. Do you cook?

04:46:58 24 **A** I do.

04:46:58 25 **Q** Like what kind of stuff do you like to cook?

04:47:01 1 **A** All kinds of things. Dinners, salads.

04:47:09 2 **Q** All right. Let's say you got to cook and the recipe

04:47:14 3 says dice an onion to saute it, okay?

04:47:19 4 **A** Okay.

04:47:23 5 **Q** It will help to have a knife, won't it?

04:47:25 6 **A** Yes.

04:47:26 7 **Q** You can have the instructions, but if you don't have

04:47:29 8 the tools, makes it hard to get it done, doesn't it?

04:47:33 9 **A** Yes.

04:47:34 10 **Q** Do you think for a moment that your store -- that your

04:47:39 11 company was giving the pharmacists all of the tools they

04:47:43 12 needed to do these bullet points?

04:47:48 13 **A** I think our company was giving the tools to the best

04:47:51 14 of our ability. Was this back in 1998?

04:47:55 15 **Q** Yes, ma'am.

04:47:55 16 **A** Yes.

04:47:56 17 **Q** To the best of your ability, really?

04:47:59 18 **A** Yeah, I do.

04:48:00 19 **Q** Because even if we fast forward and look at what it

04:48:03 20 was in 2012, '13 when you took over --

04:48:07 21 **A** Yes.

04:48:07 22 **Q** -- your company wasn't giving you the electronic

04:48:10 23 refusals to fill for seven years, right?

04:48:14 24 **A** Correct. But we had an operational program in place

04:48:19 25 for that.

04:48:19 1 Q Ma'am, you said "to the best of our ability."

04:48:24 2 Do you remember that?

04:48:24 3 A Yes.

04:48:24 4 Q To the best of your ability, do you really want to say  
04:48:28 5 that under oath, that you all gave those tools to the best  
04:48:33 6 of your ability?

04:48:33 7 A And I explained why we did not have that, because we  
04:48:36 8 were changing computer systems.

04:48:39 9 Q Ma'am, to the best of your ability, do you think you  
04:48:43 10 gave those tools to those pharmacists --

04:48:45 11 A Yeah.

04:48:46 12 Q -- as soon as you could?

04:48:47 13 A I did, and I'll tell you why. Because a computer  
04:48:51 14 enhancement takes a long time to put in place, so I would  
04:48:54 15 not have been able to put that target drug good faith  
04:48:58 16 dispensing checklist in place immediately. It took months  
04:49:02 17 and months and months to put that into an electronic format.

04:49:05 18 Q Well, let's look at a test of that with beyond just  
04:49:09 19 the computer system. Let's look at the training that was  
04:49:12 20 involved.

04:49:13 21 Was your company training to the best of its ability?

04:49:19 22 A We trained our pharmacists.

04:49:22 23 Q Wasn't my question.

04:49:23 24 Was the company training to the best of its ability?

04:49:29 25 A My testimony is, yes, I felt that we were doing good

04:49:34 1 work and doing good things for our pharmacists.

04:49:36 2 **Q** So when you noted that "there was no periodic training  
04:49:40 3 for dispensing in 2010" -- that's Plaintiffs' Exhibit  
04:49:46 4 1956 --

04:49:47 5 **A** Yes.

04:49:47 6 **Q** -- "no such training exists today."

04:49:51 7 Do you think you were training to the best of your  
04:49:53 8 ability?

04:49:53 9 **A** We did because we trained our pharmacists on hire --

04:49:56 10 **Q** Could you have done periodic training of all  
04:49:59 11 Walgreens' retail employees for dispensing controlled  
04:50:04 12 substances?

04:50:04 13 **A** We could have.

04:50:04 14 **Q** You could have?

04:50:05 15 **A** Yeah.

04:50:05 16 **Q** And the fact that you did not sort of indicates you  
04:50:09 17 weren't doing it to the best of your ability, doesn't it?

04:50:15 18 **A** I think we were doing the job that we were doing, we  
04:50:18 19 were hiring our pharmacists, we were training them.

04:50:21 20 We could have done periodic training. We did not have  
04:50:25 21 periodic training in place in 2010.

04:50:26 22 **Q** And not only that, you agreed with the DEA to change  
04:50:30 23 things in 2011, didn't you?

04:50:33 24 **A** Yes.

04:50:34 25 **Q** Doesn't that tell you that maybe you weren't doing



04:50:37 1 them to the best of your ability?

04:50:38 2 **A** To the best of the DEA's expectation, yes.

04:50:44 3 **Q** Weren't -- no, weren't doing them to the best of your  
04:50:48 4 ability. Y'all were able to do better and agreed with the  
04:50:53 5 DEA you would do better. True?

04:50:56 6 **A** True.

04:50:56 7 **Q** And then the game changed in 2013, didn't it?

04:51:02 8 **A** Yes.

04:51:04 9 **Q** And that game change was another DEA problem, the  
04:51:12 10 second one, right?

04:51:13 11 **A** Yes.

04:51:13 12 **Q** And that showed you some other areas where Walgreens  
04:51:17 13 was not doing it to the best of its ability, correct?

04:51:20 14 **A** Yes.

04:51:21 15 **Q** And as a result, entered into a massive settlement  
04:51:25 16 agreement with the DEA, true?

04:51:30 17 **A** Yes.

04:51:30 18 **Q** And then there are audit problems in 2014, true?

04:51:37 19 **A** Yes.

04:51:37 20 **Q** Which tells you that the company's not doing it to the  
04:51:41 21 best of its ability in 2014, right?

04:51:43 22 **A** It's telling me that the stores are not following  
04:51:47 23 through with the expectations of the policies.

04:51:51 24 **Q** And that has got to be a reflection of either hiring  
04:51:56 25 bad people, not training people properly, not giving them

04:51:59 1 the tools, something associated with why it was happening,  
04:52:04 2 right?

04:52:06 3 **A** Yes.

04:52:08 4 **Q** And so the store wasn't doing this to the best of its  
04:52:11 5 ability in 2014, the company wasn't, was it?

04:52:14 6 **A** The store was not following through, and the audit  
04:52:18 7 showed it. And we made changes accordingly.

04:52:22 8 **Q** And then in 2015 there were still audit problems,  
04:52:26 9 weren't there?

04:52:28 10 **A** Yes. We do follow-ups to ensure that our policies are  
04:52:31 11 being followed.

04:52:32 12 **Q** And in that regard, you were asked about Exhibit 15,  
04:52:45 13 and specifically in Exhibit 15, that's the settlement  
04:52:50 14 agreement.

04:52:51 15 Do you remember that?

04:52:51 16 **A** Yes.

04:52:51 17 **Q** You were asked by Ms. Swift on page 5, section B.

04:53:13 18 Let's go back and do it off the e-mail. I think  
04:53:15 19 that's the easier way to do it.

04:53:16 20 You were asked off the e-mail about Section 5.

04:53:29 21 Specifically you were asked, "I will only put the  
04:53:32 22 sections we need to work on."

04:53:34 23 Do you remember that?

04:53:35 24 **A** Yes.

04:53:35 25 **Q** And so on page 5 -- all right, my copy -- you may get

04:53:51 1 out of this question because my copy's not finding the page.

04:53:54 2 Ma'am, do you remember where Ms. Platts indicated --

04:54:03 3 tell you what, it's going to be in my stack of stuff here,

04:54:06 4 and we're going to come to it later, and if not -- oh, here

04:54:10 5 it is. Yes.

04:54:11 6 Section B you were asked about. Do you remember this?

04:54:19 7 **A** Yes.

04:54:20 8 **Q** Ms. Platts said, "This program shall include

04:54:23 9 procedures to identify the common signs associated with

04:54:27 10 diversion, including, but not limited to, doctor shopping

04:54:30 11 and requests for early refills."

04:54:32 12 Ms. Platts said, "I could not find anything in our

04:54:38 13 procedures that addressed this request."

04:54:40 14 **A** That's what she said.

04:54:42 15 **Q** And you're telling the jury, oh, no, it was in there,

04:54:45 16 she just couldn't find it, right?

04:54:46 17 **A** It was in our policy. She was not looking at a

04:54:49 18 policy.

04:54:49 19 **Q** Which tells you that even Debbie Platts, who's in

04:54:52 20 charge of some of this stuff, doesn't know what the policies

04:54:55 21 are, doesn't it?

04:54:55 22 **A** She did not know it was in the policy, correct.

04:54:59 23 **Q** And what was her job?

04:55:01 24 **A** She was divisional healthcare supervisor.

04:55:12 25 **Q** And if a divisional healthcare supervisor doesn't know

04:55:16 1 what's in the policies, don't you think you can do better?

04:55:22 2 **A** Well, the divisional healthcare supervisor should know  
04:55:24 3 at a high level, I would agree; however, they're not  
04:55:28 4 dispensing the prescriptions.

04:55:29 5 **Q** Wasn't my question, ma'am.

04:55:31 6 If the divisional healthcare supervisor doesn't know,  
04:55:36 7 don't you think you can do better?

04:55:38 8 **A** Okay.

04:55:42 9 **Q** Next, calling the doctor in 1998 was not deemed  
04:55:57 10 adequate anymore.

04:55:59 11 Remember?

04:55:59 12 **A** Yes.

04:55:59 13 **Q** That was the policy in 1998, wasn't it?

04:56:02 14 **A** Yes.

04:56:03 15 **Q** And the policy didn't change until when?

04:56:08 16 **A** I don't know the exact date that the policy changed,  
04:56:11 17 but I bet you've got it in front of you there that you can  
04:56:14 18 remind me.

04:56:15 19 **Q** Well, I'll bet that you put it into a PowerPoint where  
04:56:18 20 you said calling the doctor is no longer adequate anymore.

04:56:21 21 **A** I did. When we were going through the changes of what  
04:56:25 22 was happening in the industry, we did discuss that with our  
04:56:29 23 field leaders.

04:56:29 24 **Q** Was it about 2013?

04:56:31 25 **A** January of 2013, correct.

04:56:33 1 Q And so while the epidemic rages -- we looked at it  
04:56:39 2 from a PowerPoint from 2000 to 2009 -- your company policy  
04:56:45 3 is calling the doctor is adequate. But the truth of the  
04:56:50 4 matter is it never should have been considered adequate,  
04:56:53 5 should it?

04:56:53 6 A I believe you're taking the calling the doctor a bit  
04:56:57 7 out of context but --

04:57:00 8 Q Well, we can look at it.

04:57:02 9 A I know we can, but you were not in the meeting, you  
04:57:05 10 were not there when I discussed it with the field, and you  
04:57:07 11 were not there when I explained to the field leaders why and  
04:57:10 12 what the process was for validating a prescription and  
04:57:13 13 ensuring that the pharmacist is doing their corresponding  
04:57:18 14 responsibility.

04:57:18 15 Q Now, Ms. Polster, when you proposed that you would  
04:57:21 16 need a full team complement of 12 for each region --

04:57:27 17 A No.

04:57:27 18 Q I mean, 12 total, that you needed a full team  
04:57:31 19 complement for each region, right?

04:57:32 20 You didn't get permission to hire all 12 at once  
04:57:35 21 because of budget concerns, true?

04:57:38 22 A No, I did get permission when --

04:57:40 23 Q You were not able to fill all of those jobs at once  
04:57:43 24 because of budget considerations, right?

04:57:45 25 A I don't remember budget consideration, but I was

04:57:48 1 allowed to hire, and I did get my full complement.

04:57:52 2 **Q** Eventually, within -- but it took six months? How  
04:57:56 3 long did it take?

04:57:56 4 **A** It might have. It takes a while to find good  
04:57:59 5 candidates, yes.

04:57:59 6 **Q** Well, it wasn't to find good candidates. At first you  
04:58:03 7 don't recall the budget issue?

04:58:04 8 **A** I recall requesting -- a request for head count, which  
04:58:08 9 is the normal procedures that go into place. When you're  
04:58:11 10 adding additional head count to a team, you have to get  
04:58:14 11 approval to do that.

04:58:16 12 But I was allowed to hire prior to that.

04:58:21 13 **Q** They just weren't allowed to start working until --

04:58:23 14 **A** It's just I was in the process of hiring,  
04:58:27 15 interviewing, finding the right candidates.

04:58:28 16 **Q** Let me -- I don't have that with me. We'll look at  
04:58:40 17 that in a moment, if I've got time.

04:58:42 18 Now, in this regard, I have a question. You talked  
04:58:48 19 when pharmacists get fired, remember?

04:58:53 20 **A** Yes.

04:58:53 21 **Q** You said they get fired for not following the law,  
04:58:55 22 right?

04:58:57 23 **A** Yes.

04:58:58 24 **Q** And so you can tell us which got fired after the  
04:59:03 25 memorandum of authority, right?

04:59:05 1 **A** I cannot tell you who specifically --

04:59:09 2 **Q** Memorandum of agreement.

04:59:11 3 **A** -- has been fired, no.

04:59:13 4 **Q** Order to show cause, can you tell us which ones got  
04:59:16 5 fired?

04:59:17 6 **A** I can't tell you any specific pharmacist. We have a  
04:59:21 7 discipline process in our company that is a step discipline  
04:59:24 8 process through verbal, written, and final written, and then  
04:59:30 9 termination. We have that policy in place for our people.

04:59:43 10 **Q** Now, as we look at the memorandum of agreement --  
04:59:49 11 remember that?

04:59:49 12 **A** Yes.

04:59:49 13 **Q** That's something where y'all had to follow those  
04:59:57 14 agreements, right?

04:59:57 15 **A** Yes.

04:59:58 16 **Q** And so you stated in reference to the memorandum of  
05:00:05 17 agreement that the company executed those pieces that you  
05:00:09 18 spoke of, right?

05:00:10 19 **A** Yes.

05:00:10 20 **Q** But the company didn't execute everything perfectly,  
05:00:14 21 did it?

05:00:15 22 **A** Oh, there's always something that we may find later  
05:00:18 23 that we need to improve on, yes.

05:00:20 24 **Q** Well, yeah, I mean, we can just look at the 2011  
05:00:23 25 agreement and see that y'all got into more trouble again,

05:00:27 1 you had to enter into another agreement in 2013, right?

05:00:30 2 MS. SWIFT: Objection, Your Honor.

05:00:31 3 THE COURT: Overruled.

05:00:32 4 **A** Yes.

05:00:32 5 **Q** Now, the sentences that are in here that you say y'all  
05:00:39 6 were already doing, do you remember those sentences?

05:00:42 7 **A** I remember discussing that.

05:00:43 8 **Q** Why do most of those sentences have such long or more  
05:00:50 9 than one explanation if there are delivered policies and  
05:00:57 10 procedures already?

05:00:57 11 **A** You'll have to be specific. I'm not understanding  
05:00:59 12 your question.

05:01:00 13 **Q** Well, I'm -- I didn't write the question, but I think  
05:01:04 14 I understand it. I'm going to give it a shot.

05:01:11 15 The administrative memorandum of agreement, for  
05:01:16 16 example. And I've pulled the one from 2011. Okay?

05:01:22 17 **A** Okay.

05:01:23 18 **Q** 2011 one. "Walgreens agrees to maintain a compliance  
05:01:30 19 program to detect and prevent diversion as required."

05:01:33 20 Do you see that?

05:01:34 21 **A** Yes.

05:01:34 22 **Q** Now, if that's already being done, the sentence could  
05:01:37 23 stop there, couldn't it?

05:01:40 24 **A** Yes.

05:01:40 25 **Q** But instead, the sentence -- or the paragraph goes on.



05:01:46 1 "This program shall include," and y'all are given  
05:01:50 2 "procedures to identify the common signs associated with the  
05:01:52 3 diversion of controlled substances, "including, but not  
05:01:56 4 limited to, doctor shopping and requests for early refills."  
05:01:59 5 It goes on to talk about what the program will include about  
05:02:02 6 routine and periodic training.

05:02:04 7 You see all of that?

05:02:05 8 **A** Yes.

05:02:05 9 **Q** I mean, if y'all were already doing that, those are  
05:02:08 10 pretty irrelevant sentences, aren't they?

05:02:11 11 **A** Well, if they didn't have the exact words the DEA was  
05:02:13 12 looking for, they had every right to tell us what they  
05:02:16 13 thought should be added in there.

05:02:17 14 **Q** All right. By the way, on firing people, if Walgreens  
05:02:32 15 is going to fire a registered pharmacist who violates the  
05:02:35 16 law, what does the investigation process look like?

05:02:40 17 **A** I can tell you high level, if it comes through a  
05:02:44 18 hotline, it would go through our compliance department. If  
05:02:47 19 it goes through our district leaders, it would go through a  
05:02:53 20 process of a verbal warning, a written warning, a final  
05:02:58 21 written warning, and then a termination.

05:03:02 22 **Q** And this process, what does Walgreens identify as  
05:03:10 23 warning signs?

05:03:11 24 **A** It's going to change by instance. I wouldn't be able  
05:03:14 25 to tell you a specific.

05:03:17 1 Q All right. Now, Plaintiffs' Exhibit 19927 is your  
05:03:35 2 personnel file.

05:03:37 3 Do you remember we talked about that yesterday in the  
05:03:39 4 early, early going?

05:03:41 5 A Yes.

05:03:41 6 Q I blacked out your e-mail address, your phone numbers,  
05:03:44 7 and your physical address, so anybody who's in court can't  
05:03:50 8 call you. All right?

05:03:51 9 A Okay.

05:03:51 10 Q But there's something I didn't black out, and that's  
05:03:54 11 the comments on page 31.

05:03:57 12 Can you read that?

05:03:58 13 A Yes.

05:04:01 14 Q "Natasha Polster, (self). 9 out of the 12 employees  
05:04:08 15 were hired for the team before the hiring freeze came down."

05:04:11 16 Do you see that?

05:04:12 17 A Yes.

05:04:15 18 Q So when I asked you if you recall whether or not you  
05:04:17 19 were able to hire all 12 immediately and you said yes, does  
05:04:21 20 this refresh your recollection that maybe 9 out of the 12  
05:04:25 21 were hired and then there was a hiring freeze?

05:04:28 22 A You're right.

05:04:29 23 MS. SWIFT: Objection. Mischaracterizes.

05:04:30 24 MR. LANIER: She just said I was right.

05:04:32 25 THE COURT: Overruled.

05:04:33 1 **A** You're right. I forgot about the hiring freeze that  
05:04:35 2 happened. I did not feel that I was not supported in  
05:04:39 3 getting that full team. We were able to do what we needed  
05:04:41 4 to do.

05:04:42 5 **Q** I understand. It's just it was a question from the  
05:04:44 6 jury that I was asking you.

05:04:45 7 **A** That's fair.

05:04:49 8 **Q** Now, here is, then, Plaintiffs' Exhibit 20639. And  
05:04:56 9 this is the one that tells us what your policy really was  
05:04:59 10 before this DEA agreement, doesn't it?

05:05:03 11 **A** That is my speaker notes that I referred to when I  
05:05:11 12 gave the presentation, yes.

05:05:12 13 **Q** Well, you not only referred to them, you type them  
05:05:15 14 into the computer, don't you?

05:05:16 15 **A** Well, I typed them into my computer, yes, or the notes  
05:05:19 16 that my team gave. I don't know who gave this one.

05:05:21 17 **Q** Well, you type them in. You said they were your  
05:05:26 18 notes. "We have learned more about the DEA's expectations  
05:05:32 19 around good faith dispensing."

05:05:34 20 **A** Yes.

05:05:34 21 **Q** "We felt the steps we were taking did not go far  
05:05:37 22 enough."

05:05:39 23 Do you see that?

05:05:39 24 **A** Yes.

05:05:39 25 **Q** Do you really think you were doing the best you could

05:05:43 1 when your steps didn't go far enough?

05:05:44 2 **A** With the information that we had prior to all of that,  
05:05:47 3 yes.

05:05:47 4 **Q** Well, even you believe that by this point in time --  
05:05:51 5 this is 2013 -- by this point in time you think the pain  
05:05:56 6 clinics have been shut down and y'all are seeing this  
05:06:00 7 onslaught of new prescriptions.

05:06:03 8 Remember?

05:06:04 9 **A** Yes.

05:06:04 10 **Q** And then, "The game has changed. We can no longer  
05:06:11 11 rely on the, quote, I spoke to the prescriber and he or she  
05:06:15 12 said it was okay."

05:06:18 13 **A** That's right.

05:06:19 14 **Q** Well, you could have made that change years before,  
05:06:22 15 couldn't you?

05:06:23 16 **A** We could have, and we didn't change the actual  
05:06:26 17 verbiage, but that didn't mean that the pharmacist wasn't  
05:06:30 18 checking through and doing their good faith dispensing.

05:06:33 19 Our policy did not change the words, but we supported  
05:06:36 20 our pharmacists. When they called and talked to the  
05:06:40 21 prescriber and the prescriber said that they wrote the  
05:06:44 22 prescription but they still felt that they shouldn't fill  
05:06:46 23 it, our pharmacists were supported to not fill the  
05:06:49 24 prescription.

05:06:50 25 **Q** And then Ms. Swift asked you about slide number 10 on

05:06:57 1 that slide deck.

05:06:57 2 **A** Yes.

05:06:58 3 **Q** And what you meant by your notes down below.

05:07:04 4 Remember?

05:07:05 5 **A** Yes.

05:07:05 6 **Q** You said to these businesspeople, "Realistically,  
05:07:10 7 bottom line, yes, sales are going to be impacted."

05:07:13 8 **A** Yes.

05:07:14 9 **Q** "How is this going to impact my sales, what's it going  
05:07:18 10 to do to my good customers' numbers so we can address the  
05:07:23 11 issue without significantly impacting our other business."

05:07:27 12 [As read]

05:07:30 13 Do you see that?

05:07:30 14 **A** Yes.

05:07:30 15 **Q** And you can say what that means, but the bottom line  
05:07:33 16 is is you're having to address how this is going to impact  
05:07:38 17 sales, aren't you?

05:07:39 18 **A** Yes, I am explaining to the field leaders that we are  
05:07:41 19 expecting for them to support their pharmacists to not fill  
05:07:45 20 prescriptions if the pharmacists feel that they shouldn't  
05:07:47 21 fill it.

05:07:49 22 **Q** All right. And then you were asked about the poll,  
05:07:53 23 the audit information. Remember those questions?

05:07:56 24 **A** Refresh me which one you're talking about.

05:07:59 25 **Q** Yes, ma'am. You gave the BCI executive summary?

05:08:01 1 **A** Yes.

05:08:01 2 **Q** And said -- I think you said --

05:08:03 3 **A** These were the questions that those loss prevention  
05:08:06 4 people did, yes.

05:08:07 5 **Q** Yeah, here's the way Ms. Swift asked the question. I  
05:08:11 6 tried to write it down word for word.

05:08:12 7 She said, "That sounds pretty good. Were you happy  
05:08:16 8 with these results?"

05:08:18 9 Do you remember that?

05:08:18 10 **A** Yes.

05:08:19 11 **Q** Let's leave no question about it. You were not happy  
05:08:23 12 with these results, were you?

05:08:24 13 **A** I was not happy that we were not a hundred percent.

05:08:27 14 **Q** Not only that, you were in -- you were very concerned  
05:08:32 15 about these results because they're bad results. True?

05:08:35 16 **A** I was concerned that we did not have a hundred percent  
05:08:38 17 execution, yes.

05:08:39 18 **Q** Well, we go a step further than that.

05:08:43 19 MR. LANIER: If we show, please, Rachel and  
05:08:50 20 Maria, Plaintiffs' 20803.

05:09:08 21 **Q** Do you have that document in front of you?

05:09:10 22 **A** I do.

05:09:10 23 **Q** Do you remember this document?

05:09:11 24 **A** Yes.

05:09:11 25 **Q** This is the one that's got on the front page your

05:09:14 1 e-mail.

05:09:16 2 **A** Yes.

05:09:17 3 **Q** "Okay, guys, put your seat belts on."

05:09:21 4 **A** Yes.

05:09:21 5 **Q** "I had a brief hallway discussion with Scott Jonkman  
05:09:26 6 the other day about how these audits were going, and he said  
05:09:32 7 they are not going great."

05:09:34 8 **A** Yes.

05:09:34 9 **Q** Ms. Swift --

05:09:39 10 **A** I had not seen --

05:09:41 11 **Q** -- "that sounds pretty good, were you happy with these  
05:09:44 12 results?"

05:09:44 13 **A** I had not seen the results -- when I talked to Scott,  
05:09:48 14 he had not gotten all the results back.

05:09:51 15 **Q** Ma'am, I haven't asked my question.

05:09:52 16 **A** Sorry.

05:09:53 17 **Q** That's okay.

05:09:53 18 Ms. Swift: "That sounds pretty good. Were you happy  
05:09:56 19 with these results" is a bit in contrast to you, "okay,  
05:10:01 20 guys, put your seat belts on. I had a brief discussion. He  
05:10:04 21 said they're not going great."

05:10:06 22 Different spin, right?

05:10:07 23 **A** Yes.

05:10:07 24 **Q** "Given this bit of news, that concerns me. We will  
05:10:13 25 have to get a mitigation plan together on what we will do

05:10:17 1 with the results to satisfy the MOA for any noncompliance."

05:10:24 2 Do you see that?

05:10:25 3 **A** Yes.

05:10:25 4 **Q** Because what you were doing there was part of the  
05:10:28 5 agreement you'd entered into with the DEA, right?

05:10:32 6 **A** What I was doing in terms of the BCI was following up  
05:10:35 7 to ensure that we were compliant.

05:10:38 8 **Q** Exactly.

05:10:39 9 **A** There was a piece in the MOA that said that we had  
05:10:45 10 compliance checks in place. That was one of them. We did  
05:10:48 11 not get a hundred percent compliance.

05:10:51 12 And when Scott talked to me in the hallway, he had  
05:10:56 13 said, you know, we're getting results back, we're not seeing  
05:11:00 14 a hundred percent compliance, that concerned me, yes.

05:11:01 15 **Q** And when Ms. Swift asked you whether or not the DEA  
05:11:07 16 ever reported it or got written up or something like that,  
05:11:12 17 do you remember those questions?

05:11:15 18 Did the DEA ever tell you you weren't in compliance?

05:11:19 19 MS. SWIFT: Objection. I don't recall asking  
05:11:20 20 that question.

05:11:20 21 MR. LANIER: I think she did, but I'll ask it  
05:11:22 22 a different way.

05:11:23 23 THE COURT: Overruled. Overruled.

05:11:25 24 **Q** Do you remember being asked about whether or not the  
05:11:27 25 DEA ever said y'all weren't compliant?



05:11:30 1 **A** I don't remember that question.

05:11:32 2 **Q** Well, let's make it real clear.

05:11:33 3 **A** Okay.

05:11:34 4 **Q** You never sent the BCI results to the DEA, did you?

05:11:38 5 **A** No, but we don't send results of audits to the DEA.

05:11:40 6 **Q** You never sent the results of an audit to see if

05:11:44 7 you're complying with the agreement you had with the

05:11:47 8 Department of Justice that showed you did not comply with

05:11:47 9 it?

05:11:47 10 MS. SWIFT: Objection.

05:11:53 11 **Q** You didn't send that, did you?

05:11:55 12 **A** We don't send that information to the DEA.

05:11:57 13 **Q** So the DEA doesn't come scold you for being  
05:12:00 14 noncompliant -- here, let's get the wording exactly right.

05:12:02 15 "Has the DEA ever put you on notice that it believed  
05:12:07 16 Walgreens was not in compliance with this agreement?"

05:12:11 17 Now do you remember being asked?

05:12:13 18 **A** Were we talking about the 2013 agreement?

05:12:15 19 **Q** Yes, ma'am.

05:12:16 20 Now do you remember being asked?

05:12:18 21 **A** Yes, that was my understanding, yes.

05:12:20 22 **Q** Well, you never told the DEA y'all were failing in  
05:12:26 23 compliance, did you?

05:12:28 24 MS. SWIFT: Objection.

05:12:29 25 THE COURT: Overruled.

05:12:29 1 **A** We don't send compliance audit information to the DEA.

05:12:39 2 **Q** In fact, even -- well --

05:12:46 3 "We'll have to get a mission together about what we'll  
05:12:50 4 do with the results to satisfy the memorandum of agreement  
05:12:53 5 for any noncompliance we may have seen from the audit. I do  
05:12:58 6 not want to miss valuable working time, so as soon as we get  
05:13:01 7 this, I would like you guys to get started on a  
05:13:03 8 recommendation. I'm anticipating the worst. I hope the  
05:13:06 9 results are not as bad as I'm thinking they will be."

05:13:11 10 Do you see that?

05:13:11 11 **A** Yes.

05:13:11 12 **Q** Then the reply. "I can only imagine what we're going  
05:13:16 13 to find out. Scott told me a few stores had broken C-II  
05:13:19 14 cabinets that didn't lock and never submitted a service  
05:13:24 15 ticket to get them fixed."

05:13:26 16 **A** Yes.

05:13:27 17 **Q** Do you see that?

05:13:28 18 **A** Yes.

05:13:28 19 **Q** Huge problem, isn't it?

05:13:31 20 **A** It is a concern. We definitely want to make sure that  
05:13:33 21 our narcotic cabinets had working locks, yes.

05:13:37 22 **Q** Not it is a concern. It's illegal, isn't it?

05:13:41 23 **A** It is illegal that a controlled substance cabinet is  
05:13:44 24 not locked, yes.

05:13:45 25 **Q** Yeah. So it's not, well, it's a bit of a concern.

05:13:48 1 It's not a bit of a concern or a concern, it's wrong, isn't  
05:13:55 2 it?

05:13:55 3 **A** Yes, we -- and we took steps to ensure that we don't  
05:13:58 4 have controlled substance cabinets anymore. We went to  
05:14:00 5 safes.

05:14:02 6 **Q** Your reply?

05:14:04 7 **A** Yes.

05:14:05 8 **Q** "Sigh, dot, dot, dot, dot"?

05:14:07 9 **A** I was extremely disappointed. Our pharmacy managers  
05:14:10 10 should know that they need to get that corrected  
05:14:12 11 immediately.

05:14:14 12 **Q** And so then we look at the executive summary of this.  
05:14:19 13 Do you see this?

05:14:20 14 **A** Yes.

05:14:20 15 **Q** Now, not making your PowerPoint at all was issue  
05:14:24 16 number 1, "Number of C-II prescription that are not  
05:14:30 17 stickered."

05:14:31 18 They're all supposed to be stickered, aren't they?

05:14:33 19 **A** So things have changed with the memorandum of  
05:14:35 20 agreement, and we did not have to sticker controlled  
05:14:40 21 substances, and we did have to change that practice. And  
05:14:42 22 that was the beginning of the change.

05:14:44 23 **Q** No, ma'am, are you saying under the agreement you did  
05:14:47 24 not have to sticker?

05:14:49 25 **A** So, no, no, we did once the agreement came into place.

05:14:54 1 Q That's my point.

05:14:55 2 So as of 2013 when the agreement comes into place, you  
05:14:58 3 have to sticker, right?

05:15:00 4 A Yes.

05:15:00 5 Q And so this is another area where y'all were not in  
05:15:04 6 compliance with the agreement, because you had a number of  
05:15:07 7 stores that failed to sticker once, a number 10 or less, and  
05:15:14 8 a number 11 or more.

05:15:15 9 Do you see that?

05:15:15 10 A I do.

05:15:16 11 Q And those numbers look, well, you know, what's one?  
05:15:21 12 But this is just from a random file folder.

05:15:25 13 Do you see that?

05:15:26 14 A Yes.

05:15:26 15 Q It's not examining every one, is it?

05:15:29 16 A Correct.

05:15:29 17 Q And you had C-III and IV prescriptions, and that's  
05:15:38 18 where hydrocodone was at the time, true?

05:15:40 19 A I don't remember the year that it went to Schedule II,  
05:15:43 20 but yes.

05:15:43 21 Q 2014, does that ring a bell?

05:15:45 22 A Thank you.

05:15:46 23 And when was this audit done, '15?

05:15:49 24 Q It's written up -- I think it was done in '14, but  
05:15:55 25 you've got an internal audit report. I don't want to

05:15:57 1 misrepresent it. I'm not positive.

05:15:58 2 **A** Okay.

05:15:58 3 **Q** But you've still got controlled substances there,  
05:16:01 4 don't you, Schedule III?

05:16:03 5 **A** Yes.

05:16:03 6 **Q** Those were supposed to be stickered under the  
05:16:08 7 agreement, right?

05:16:09 8 **A** Yes.

05:16:09 9 **Q** And those have got stores that don't comply, correct?

05:16:12 10 **A** Yes.

05:16:13 11 **Q** So that you've got 35 percent not complying with the  
05:16:18 12 DEA there. And again, that's just from a random sample.  
05:16:21 13 That's not looking at every one, right?

05:16:23 14 **A** Yes.

05:16:23 15 **Q** So you've got 35 percent not complying with the DEA  
05:16:27 16 here, you've got 10.5 percent not complying here, you've got  
05:16:36 17 a problem of several percent, that's a rounding error, 2.9  
05:16:40 18 percent maybe, not complying there. You've got 40.5 percent  
05:16:47 19 not complying here.

05:16:52 20 And by the way, you can say, well, but it's just --  
05:16:55 21 you know, it wasn't a lot of noncompliance, right?

05:17:01 22 **A** I agreed that we should have had compliance, and I  
05:17:05 23 took action to work on that.

05:17:06 24 **Q** I just don't want it minimized for the jury by  
05:17:09 25 Ms. Swift in asking you questions.

05:17:12 1 MS. SWIFT: Objection, Your Honor.

05:17:13 2 Q This idea that -- no, this idea of the question being,  
05:17:16 3 you know, that's pretty good, isn't it? It's not.

05:17:20 4 A For that one question, she was pointing out that. But  
05:17:25 5 we want a hundred percent compliance. That's the point.

05:17:27 6 Q That's the law.

05:17:29 7 MS. SWIFT: Objection. Argumentative.

05:17:31 8 MR. LANIER: Okay, I'll pull it down, Judge.

05:17:33 9 THE COURT: I'll sustain that.

05:17:34 10 MR. LANIER: Yeah, I'll pull it down.

05:17:37 11 Q Ma'am, that was the agreement you had with the DEA,  
05:17:40 12 wasn't it?

05:17:40 13 A Yes.

05:17:41 14 Q Next. Let's talk about refusals to fill and red  
05:17:48 15 flags.

05:17:54 16 Now, the jury had some questions on this, and I want  
05:17:56 17 to make sure I recognize them all.

05:18:03 18 MR. LANIER: Judge, am I allowed to display  
05:18:06 19 the juror question on the screen so she can read it, the  
05:18:10 20 witness?

05:18:11 21 THE COURT: Okay.

05:18:11 22 MR. LANIER: Thank you.

05:18:12 23 Q "It seems as though there isn't a standardized  
05:18:15 24 location where red flags or resolved red flags are  
05:18:19 25 documented. Doesn't this make it more difficult for the

05:18:22 1 pharmacists to be able to do their due diligence in a timely  
05:18:24 2 manner, especially if notes or prior notes in the system can  
05:18:30 3 or are deleted due to space limitations?"

05:18:33 4 Do you see that?

05:18:33 5 **A** Yes.

05:18:34 6 **Q** Let's be clear. There's not a standardized location  
05:18:38 7 where all resolved red flags are documented, true?

05:18:42 8 **A** Correct.

05:18:42 9 **Q** And wouldn't you agree it does make it more difficult  
05:18:47 10 for the pharmacist?

05:18:48 11 MS. SWIFT: Objection, Your Honor. Could she  
05:18:50 12 be allowed to answer the juror's question?

05:18:52 13 MR. LANIER: That's what I'm asking.

05:18:53 14 THE COURT: Why don't you just --

05:18:55 15 Can you answer the question, ma'am?

05:18:56 16 THE WITNESS: Yes. Yes, I can.

05:18:59 17 **A** So, yes, having a standardized process was part of the  
05:19:02 18 reason why a target drug good faith dispensing checklist was  
05:19:06 19 done. Having notes in the system or notes that can be  
05:19:09 20 deleted, you need to understand that controlled substance  
05:19:13 21 prescriptions can only be -- they're only valid for a  
05:19:16 22 certain period of time. It depends on the state, depends on  
05:19:21 23 the regulation in that state, but a controlled substance  
05:19:25 24 C-II prescription could expire as soon as seven days or it  
05:19:28 25 could be a month or in some cases some states allow it to be

05:19:34 1 longer.

05:19:36 2 If the requirement of the policy is to have a  
05:19:43 3 controlled substance -- a note in the prescription for  
05:19:45 4 the -- or a note in the computer system for the specific  
05:19:48 5 prescription in front of him, a prescription that was, you  
05:19:53 6 know, refused or a note about a prescription a year prior  
05:19:55 7 could be deleted because that prescription is not even valid  
05:19:58 8 anymore.

05:20:00 9 So, yes, I understand your question. You know, it  
05:20:05 10 makes sense to have a standardized process, which is what  
05:20:08 11 the point of the checklist was supposed to be doing. But  
05:20:11 12 also, that there are multiple places in the computer system  
05:20:16 13 where a pharmacist would need to perhaps look to ensure that  
05:20:20 14 they're doing their good faith, whether there's a health  
05:20:24 15 condition with that patient as to why they need those  
05:20:27 16 medications, whether or not there's an allergy to  
05:20:30 17 medications, all of these are different fields in the  
05:20:33 18 computer system.

05:20:35 19 Q So, ma'am, I want to hone in on this part of the  
05:20:38 20 question, and I'll ask you this.

05:20:39 21 Doesn't it make it more difficult for the pharmacists  
05:20:45 22 to be able to do their due diligence in a timely manner,  
05:20:49 23 especially if notes or prior notes in the system can and are  
05:20:51 24 deleted due to space limitations?

05:20:55 25 True, right?



05:20:57 1 **A** I would agree that there are different places in the  
05:21:00 2 system that a pharmacist might need to look, but they're  
05:21:03 3 looking for it for different reasons. And so that was the  
05:21:08 4 part of the checklist as well as allowing notes to be put  
05:21:11 5 into the computer --

05:21:17 6 **Q** I'm getting notes from both ends asking me to be sure  
05:21:20 7 and remember to ask you if 15 minutes is still the metric of  
05:21:26 8 time that they're trying to fill this in at the time?

05:21:32 9 **A** I need to explain the 15 minutes.

05:21:34 10 **Q** And I'm going to pause on that, and we'll see if I've  
05:21:36 11 got time for that, because I'd like you to. But I've got it  
05:21:39 12 in another place in here, so we'll get to it in a minute.  
05:21:42 13 Okay? If I've got time.

05:21:45 14 Now, in regards to this, ma'am, there is a need to  
05:21:51 15 document red flags, right?

05:21:52 16 **A** That is the best practice, to document red flags if  
05:21:56 17 it's a red flag to the pharmacist.

05:21:57 18 **Q** And you don't dispense without documenting the red  
05:21:59 19 flag, true?

05:21:59 20 **A** That's what our policy says.

05:22:01 21 **Q** Each red flag must be resolved before dispensing,  
05:22:05 22 true?

05:22:05 23 **A** If it's a red flag to the pharmacist, yes.

05:22:07 24 **Q** Now, you've got good faith dispensing policies in  
05:22:17 25 place since 1989, true?

05:22:23 1 **A** Yes.

05:22:23 2 **Q** But those dispensing policies were not considered  
05:22:28 3 adequate by the DEA under your memorandum of agreement,  
05:22:33 4 true?

05:22:34 5 **A** Yes.

05:22:34 6 **Q** And you said prior to 2012 other groups handled the  
05:22:40 7 function of your group, right?

05:22:41 8 **A** Yes.

05:22:42 9 **Q** You talked about the loss prevention folks?

05:22:44 10 **A** Yes.

05:22:44 11 **Q** Loss prevention is trying to stop theft, isn't it?

05:22:51 12 **A** That's one of their functions, yes.

05:22:53 13 **Q** That's the main function, isn't it?

05:22:55 14 **A** Yes.

05:22:55 15 **Q** Okay. And then you were asked was this checklist  
05:23:03 16 required by law.

05:23:03 17 Do you see that?

05:23:05 18 **A** Yes.

05:23:05 19 **Q** But the truth of the matter is, the checklist was --  
05:23:09 20 came out of the agreement terms in the settlement with the  
05:23:13 21 law, right?

05:23:14 22 **A** The truth of the matter is is that I needed  
05:23:17 23 consistency across all of our stores, and the working team  
05:23:21 24 came up with the checklist.

05:23:24 25 **Q** And so we've got that target good faith dispensing

05:23:27 1 checklist, right?

05:23:29 2 **A** Yes.

05:23:30 3 **Q** And down at the bottom it's got this provision, "Per  
05:23:37 4 CDC recommendation, Narcan was offered to the patient" --  
05:23:43 5 naloxone, excuse me, which is Narcan, right?

05:23:45 6 **A** Yes.

05:23:46 7 **Q** "For CDC recommendation, naloxone was offered to the  
05:23:51 8 patient in case of an emergency in these prescriptions,  
05:23:55 9 right?

05:23:55 10 **A** Yes.

05:23:55 11 **Q** It was offered not like here's some Narcan, it was  
05:23:59 12 offered like would you like to buy some Narcan, right?

05:24:02 13 **A** No, it was what that -- well, correct, they would have  
05:24:07 14 to purchase it, yes.

05:24:08 15 **Q** Yeah, in other words, the offer of Narcan, that's an  
05:24:13 16 offer to sell Narcan, right?

05:24:14 17 **A** It's an offer to let them know that it's available,  
05:24:17 18 that they can choose to get it or not.

05:24:18 19 **Q** Right, in other words, they can buy it or not, right?

05:24:21 20 **A** Yes, or bill it to their insurance, correct.

05:24:23 21 **Q** Right. Well, I mean, one of the jurors asked this  
05:24:26 22 question: "Was naloxone offered to patients for free when  
05:24:33 23 getting 50 MMEs? If not, how much did it cost?"

05:24:37 24 **A** I don't know the exact cost of Narcan. It is covered  
05:24:43 25 on every insurance that I'm aware of, every federally

05:24:46 1 funded, like a Medicaid plan, as well as like a Medicare  
05:24:52 2 plan.

05:24:53 3 Additionally, we have -- Walgreens has had on occasion  
05:25:01 4 worked with departments of health to help distribute Narcan  
05:25:10 5 to members in their community, so the departments of health  
05:25:15 6 would give their Narcan to a Walgreens pharmacy and ask them  
05:25:24 7 to distribute it to patients who are asking for it, and  
05:25:27 8 those would be free of charge.

05:25:29 9 **Q** All right. Fair. Thank you for that further answer.

05:25:37 10 By the way, even insurance, a lot of us have co-pay on  
05:25:40 11 our insurance with pharmacies, right?

05:25:43 12 **A** Yes.

05:25:43 13 **Q** It's not like insurance just covers Narcan. You're  
05:25:46 14 not saying they cover it with no co-pay?

05:25:48 15 **A** Not all of them do.

05:25:49 16 **Q** All right. Then you showed the jury the 2020 good  
05:25:54 17 faith dispensing policy. It's like pages now, isn't it?

05:25:56 18 **A** Yes.

05:25:56 19 **Q** Let's be real clear. You could have done that  
05:25:58 20 earlier, couldn't you?

05:25:59 21 **A** Yes, we had a -- we got a new compliance department,  
05:26:02 22 and we had a new chief compliance and ethics officer that  
05:26:12 23 changed all of our policies to fit into this format.

05:26:15 24 **Q** And this was after we filed this lawsuit, right?

05:26:18 25 **A** Yes, uh-huh.

05:26:18 1 Q Excuse me?

05:26:20 2 A Yes.

05:26:20 3 Q Yes.

05:26:27 4 Now, there's a box --

05:26:29 5 THE COURT: Mr. Lanier, I was hoping we could  
05:26:30 6 conclude with this witness today, but it doesn't look like  
05:26:34 7 it's going to be possible, so I'm thinking we should break  
05:26:37 8 for the evening.

05:26:37 9 MR. LANIER: Yes, sir.

05:26:40 10 THE COURT: All right. Ladies and gentlemen,  
05:26:41 11 I appreciate your patience for a long afternoon session. We  
05:26:46 12 will break for the evening.

05:26:47 13 Usual admonitions. Don't encounter anything in the  
05:26:51 14 media and don't discuss this case with anyone.

05:26:54 15 We'll pick up at 9:00 with the balance of  
05:26:56 16 Ms. Polster's testimony. Have a good evening.

05:27:32 17 (Jury excused for the day at 5:27 p.m.)

05:27:33 18 THE COURT: All right. Please be seated for a  
05:27:34 19 minute. It's late so I don't want to stay and deal with  
05:27:37 20 exhibits.

05:27:37 21 What I'd like -- I'm trying to take it up at 8:45  
05:27:41 22 tomorrow, the few exhibits with Mr. Tsipakis, hopefully you  
05:27:50 23 can agree on it. I just need to know what's being offered  
05:27:54 24 by each side and if there are any objections, the same thing  
05:27:56 25 with Captain Villanueva. We'll put Ms. Polster's exhibits

05:27:59 1 off till she's concluded.

05:28:03 2 MR. DELINSKY: Your Honor, may I just request  
05:28:05 3 guidance on an issue? It can wait if you'd like to wait  
05:28:09 4 till 8:45.

05:28:10 5 THE COURT: If it's quick, what is it?

05:28:13 6 MR. DELINSKY: On the deposition designations,  
05:28:14 7 we're bringing very few to Your Honor's --

05:28:18 8 THE COURT: You can be excused, ma'am.

05:28:19 9 THE WITNESS: Thank you.

05:28:20 10 (Witness excused.)

05:28:20 11 MR. DELINSKY: We're bringing very few to Your  
05:28:22 12 Honor's attention. When we have overruled objections, we  
05:28:28 13 believe they're preserved when the Special Master rules on  
05:28:30 14 them, and the vast majority we're not bringing to you, but  
05:28:33 15 there's a small number that are important. And out of an  
05:28:39 16 abundance of caution, we do want to make a record of them.  
05:28:43 17 But we understand they're upsetting to you --

05:28:49 18 THE COURT: They're coming out of the blue. I  
05:28:51 19 don't know the context, I mean -- so, and it's almost  
05:28:54 20 impossible to -- for me to deal with them in a coherent way.

05:29:01 21 MR. DELINSKY: My question, Your Honor, is  
05:29:02 22 what -- because we -- we're hearing you, it is unwieldy.  
05:29:08 23 We're trying to find the best process for this. We're  
05:29:10 24 really trimming back. We're bringing very few to you.  
05:29:15 25 They're the ones that we think are particularly important,

05:29:18 1 and we just want to make sure that on one hand we're  
05:29:23 2 protecting our client's interests in making the objections  
05:29:27 3 we should, and on the other hand, we're making it easy for  
05:29:32 4 you and not introducing another burden.

05:29:33 5 THE COURT: I mean, on those things that I was  
05:29:35 6 dealing with earlier today, it's not a big deal either way.  
05:29:38 7 There's nothing in there that hasn't been in before, some  
05:29:43 8 brief mention about the memorandums of understanding or the  
05:29:47 9 settlement agreements. There's nothing new, and it's short.  
05:29:51 10 So I don't think it matters, all right?

05:29:53 11 And I don't think the plaintiffs need it, but it's not  
05:29:56 12 so -- at this point, it's not prejudicial to have a couple  
05:30:01 13 questions on it. But I think it should be streamlined. If  
05:30:04 14 there's -- if the reason to have it is that the plaintiffs  
05:30:08 15 simply want to point out that this was publicly available to  
05:30:12 16 everyone, fine, maybe that can be in one question. It's  
05:30:16 17 publicly available.

05:30:17 18 Or maybe we'll have a stipulation that these things  
05:30:20 19 were published, everyone knew about them. Clearly everyone  
05:30:23 20 knew about them. We've had testimony, everyone -- every  
05:30:26 21 defendant knew about everyone else's settlement agreements,  
05:30:30 22 all right? Or orders to show cause. They're public.

05:30:32 23 But so if you can come to some agreement, fine. If  
05:30:39 24 there's still an objection, I'll deal with it. If it's real  
05:30:42 25 important, obviously that's my job, I'll deal with it. I

05:30:45 1 mean, if it takes time, I'll deal with it, I'll simply  
05:30:49 2 charge it to both sides like I've been doing, but I will  
05:30:51 3 address them, okay? That's how it works. I'm the judge. I  
05:30:54 4 understand that.

05:30:54 5 MR. DELINSKY: We'll make every effort to  
05:30:56 6 streamline it further.

05:30:57 7 THE COURT: But, you know, if there's  
05:30:58 8 something that you can't agree on and it's real important,  
05:31:01 9 obviously I'll -- that's -- I'm the judge, I'll do it.  
05:31:05 10 However long it takes, I'll do it.

05:31:07 11 MS. SULLIVAN: Your Honor, one other quick  
05:31:08 12 thing on scheduling for tomorrow. We had offered  
05:31:12 13 Mr. Chunderlik, our former employee, first thing in the  
05:31:14 14 morning. He's taken now two days off as I mentioned before  
05:31:18 15 because they originally wanted him Tuesday. I would just  
05:31:20 16 like to get him on and off tomorrow. I don't know what the  
05:31:22 17 plaintiffs --

05:31:23 18 THE COURT: Obviously both sides thought that  
05:31:25 19 Ms. Polster would be on and off long before now. But again,  
05:31:29 20 I'm not answering the questions on either side -- or asking  
05:31:31 21 them, I'm sorry.

05:31:32 22 MR. LANIER: I was asked by the lawyer for  
05:31:34 23 Giant Eagle if it would be okay to put him on Tuesday of  
05:31:37 24 next week. I'm fine with that. That would be out of -- I  
05:31:41 25 will have rested by then. As long as the Court would allow



05:31:46 1 me to keep my case open as to Giant Eagle until after he  
05:31:48 2 takes the stand Tuesday, I have no problem doing it on  
05:31:51 3 Tuesday.

05:31:51 4 MS. SULLIVAN: Your Honor, we would prefer  
05:31:51 5 just putting him on before they rest, and he's ready to go  
05:31:51 6 tomorrow. Is there a reason we can't get him on and off  
05:31:56 7 tomorrow?

05:31:56 8 MR. LANIER: Yes, as I explained to  
05:31:58 9 Ms. Sullivan, I've got two witnesses that have been here for  
05:32:00 10 two days that I've got to get on the stand that have been  
05:32:02 11 ready to go. And I've got to get them on and off. I  
05:32:06 12 just -- if it were just Mr. Chunderlik, that would be fine,  
05:32:10 13 but Ms. Sullivan told me she has three hours of direct with  
05:32:13 14 him.

05:32:13 15 MS. SULLIVAN: I can cut it down to two.

05:32:14 16 MR. LANIER: Which still means that I wouldn't  
05:32:16 17 be able to get my witnesses on and off the stand tomorrow  
05:32:18 18 which I need to do to be able to rest.

05:32:20 19 So I just think Tuesday works as long as, Judge,  
05:32:24 20 you'll let me --

05:32:25 21 THE COURT: I don't have -- I've said a long  
05:32:27 22 time ago that we'll accommodate witnesses and, you know, for  
05:32:32 23 whatever reason to take people out of order. So we -- you  
05:32:36 24 know, it's a six-week trial, things come up. So --

05:32:42 25 MS. SULLIVAN: Your Honor, my only concern is

05:32:44 1 he shouldn't rest until he puts my witness on, and he's  
05:32:48 2 ready to go tomorrow. And if he's on Tuesday, fine, he'd  
05:32:52 3 let him rest after he puts our witness on.

05:32:54 4 THE COURT: We're not going to have a gap of a  
05:32:59 5 day and a half, Ms. Sullivan, that isn't happening, okay? I  
05:33:02 6 don't operate that way. So we're going straight through.  
05:33:05 7 We're not taking gaps in the middle of the trial.

05:33:11 8 So it doesn't really matter who's calling who and when  
05:33:15 9 they are. The jury's listening to every one and they're  
05:33:17 10 going to take everything in regardless of who asks the  
05:33:19 11 question, all right?

05:33:20 12 I mean, the plaintiffs are calling, you know,  
05:33:22 13 corporate employees in their case, but they could -- you  
05:33:27 14 could have called them too, and the order doesn't matter.

05:33:30 15 MS. SULLIVAN: I understand, Your Honor. As  
05:33:31 16 long as we can -- it's just been so unfair to this guy who  
05:33:34 17 keeps taking days off because the plaintiffs keep changing  
05:33:36 18 the day they want him, so I'm just asking that he be --

05:33:39 19 THE COURT: Look, Ms. Sullivan, I don't think  
05:33:44 20 Mr. Lanier has been trying to disrupt Mr. Chunderlik's life.  
05:33:48 21 Okay? Everyone thought that this witness was going to be on  
05:33:49 22 and off by now. I'm not blaming anyone. The testimony took  
05:33:52 23 longer.

05:33:53 24 MS. SULLIVAN: Your Honor, he had asked for  
05:33:54 25 him on Tuesday, then they changed their mind, but I

05:33:55 1 understand Your Honor's ruling.

05:33:56 2 The only other point, Your Honor, in fairness, I'm  
05:33:58 3 hoping that if we get juror questions in the defense case,  
05:34:01 4 we'll get to ask the questions as opposed to plaintiffs'  
05:34:04 5 lawyers?

05:34:05 6 There is a fairness issue that the juror -- you know,  
05:34:07 7 with the plaintiffs appearing to be helping the jurors by  
05:34:09 8 asking their questions, and so a way to remedy that is that  
05:34:13 9 we do it in the defense case.

05:34:16 10 THE COURT: Look, I will simply -- Mr. Lanier  
05:34:18 11 got up first. I mean, he might have asked them.

05:34:21 12 MS. SULLIVAN: But it's been that way  
05:34:22 13 throughout his case, Your Honor, and there is a basic  
05:34:25 14 fairness issue in terms of appearance.

05:34:26 15 THE COURT: Well, it's going to be the other  
05:34:28 16 way around, Ms. Sullivan, when it's your side because you'll  
05:34:30 17 be up first.

05:34:31 18 MS. SULLIVAN: That was my only question, Your  
05:34:33 19 Honor. Thank you, Your Honor.

05:34:34 20 MR. LANIER: I'm not going to be fussy about  
05:34:36 21 that.

05:34:36 22 THE COURT: No. You will be up first on  
05:34:39 23 redirect, so you'll have the first crack at asking the  
05:34:41 24 questions. That's the way it works.

05:34:42 25 MS. SULLIVAN: Thank you, Your Honor.

05:34:42 1 MR. LANIER: In that regard, Your Honor, if I  
05:34:43 2 could take one more minute of your time.

05:34:45 3 I have at this point marked with a Post-it Note, a  
05:34:49 4 little sticky, the three questions I think I've asked. I  
05:34:52 5 may have asked a couple more, but they're several questions  
05:34:55 6 on a page. I'm not just not sure. I've talked to  
05:34:58 7 Ms. Swift. What we would ask the Court jointly is could we  
05:35:02 8 leave the originals with Mr. Pitts but could we take  
05:35:06 9 pictures of them so that we're both able to work on them  
05:35:09 10 tonight?

05:35:09 11 THE COURT: Sure, you can copy, sure.

05:35:11 12 MR. LANIER: Thank you, Your Honor.

05:35:12 13 MS. SWIFT: Thank you, Your Honor.

05:35:17 14 THE COURT: All right. And today, I had 3 1/2  
05:35:19 15 hours for each side by my computation, so --

05:35:22 16 MR. LANIER: Judge, I have tried cases from  
05:35:24 17 coast to coast. I've never met a harder working judge. You  
05:35:27 18 get seven hours of testimony in a day, that's like a record.

05:35:31 19 THE COURT: I mean, my commitment to you --  
05:35:34 20 everyone's working real hard -- my commitment to you and my  
05:35:37 21 commitment to the jury is that whatever other court business  
05:35:39 22 I have I squeeze into the noon hour. And I had two matters  
05:35:44 23 during the noon hour, so --

05:35:46 24 MR. LANIER: I've never seen this before.  
05:35:48 25 It's killing me, but I'm in respect and awe.

05:35:52 1 THE COURT: I appreciate that, Mr. Lanier. I  
05:35:55 2 think it --

05:35:55 3 MR. LANIER: It's crazy.

05:35:57 4 THE COURT: The smoother this goes, the more  
05:36:00 5 the jury is able to focus and keep their attention, and I  
05:36:02 6 think that's the fairest to the plaintiffs and to the  
05:36:05 7 defendants.

05:36:05 8 MR. LANIER: Both sides, that's right.

05:36:06 9 THE COURT: It's my experience as a trial  
05:36:08 10 lawyer which I had 22 years of.

05:36:10 11 Okay. Have a good evening.

05:36:13 12 COUNSEL EN MASSE: Thank you, Your Honor.

05:36:13 13 (Proceedings adjourned at 5:36 p.m.)

14 \* \* \* \* \*

15 **C E R T I F I C A T E**

16  
17 I certify that the foregoing is a correct transcript  
18 of the record of proceedings in the above-entitled matter  
19 prepared from my stenotype notes.

20  
21 /s/ Lance A. Boardman 10-20-2021  
22 Lance A. Boardman, RDR, CRR DATE